



215 SW Washington Street, Suite 200  
Portland, OR 97204

T 503.242.1745  
F 503.242.1072

HOBBSSTRAUS.COM

## MEMORANDUM

April 9, 2020

To: Tribal Housing Clients  
Fr: HOBBS, STRAUS, DEAN & WALKER, LLP  
Re: **NAIHC Legislative Committee Meeting; HUD Webinar on COVID-19**

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Tribal and federal leaders are continuing to respond to the COVID-19 pandemic. This memo provides a brief summary of updates from the National American Indian Housing Council (“NAIHC”) Legislative Committee and from HUD ONAP, both of which hosted teleconference calls related to the COVID-19 pandemic.

### **I. Legislative Committee Meeting**

The NAIHC Legislative Committee held its monthly meeting by teleconference on April 8, 2020. The main purpose of the call was to provide the latest updates on the CARES Act and other COVID legislation, FY2021 Appropriations, Tribal HUD-VASH, Native American Housing Assistance and Self-Determination Act of 1996 (“NAHASDA”), and the Continuum of Care bill. NAIHC Executive Director Tony Walters presided over the meeting. At the end of the meeting, Mr. Walters answered questions from callers concerning CARES Act funding.

Mr. Walters began by remarking that the regular HUD Indian Community Development Block Grant (“ICDBG”) Program process is ongoing. HUD does not expect the process to slow down because of the COVID-19 response packages. Mr. Walters stated that the typical timeline for awards to be posted is two months, and this year should not be much different.

Mr. Walters also noted that NAIHC has developed a grant program in collaboration with Wells Fargo to carry out housing repairs for senior homeowners in tribal communities. The deadline for applications was mid-March and NAIHC hopes to announce the awards early next week. Additionally, the next NAIHC legislative committee meeting will be May 7<sup>th</sup>. The NAIHC annual convention is formally canceled, so the May 7<sup>th</sup> meeting will be through conference call.

#### ***A. CARES Act and other COVID Legislation***

Mr. Walters provided an update on the CARES Act (the third Congressional bill passed in response to the COVID-19 pandemic), along with a discussion of potential items that may be a part of the next piece of legislation. He noted that Congress is currently on a recess, so there has not been much new information available on this next phase, which people are beginning to refer

to as “CV4.” Initial discussions around CV4 legislation focused on infrastructure. However, more recently, it appears that the focus of CV4 will be on filling gaps in funding and fixing issues that came up through prior COVID-19 legislation. NAIHC is continuing to work with Congress to make sure that tribes will be eligible for funds under CV4.

Under the CARES Act, the \$8 billion Coronavirus Relief Fund for tribes is for increased expenditures related to the COVID-19 public health emergency. The funding was originally intended to shore up tribal businesses to support tribal communities during the pandemic. Housing is not really covered under this funding. However, Mr. Walters noted that while tribal housing may not be able to directly access any of the \$8 billion in funding, tribes who receive funding will likely be able to decide to use this for housing programs. Mr. Walters therefore encouraged housing authorities to work with the tribal councils to ensure that some of the funding is directed toward housing programs.

One caller questioned whether there will be any congressional discussion in drafting CV4 legislation on Indian homeownership problems. Mr. Walters responded that there has been congressional discussion of allocating some funds to housing finance agencies. NAIHC is working with Congress to ensure that tribes are eligible for this funding as well. The new CV4 legislation will likely include language to help homeowners, including tribal homeowners, with mortgage payments and other issues related to homeownership.

A second caller noted that because of increased unemployment in Indian Country due to the COVID-19 pandemic, there will be a longer-term impact on tribal housing wait lists. The caller asked whether regional HUD offices are discussing this with ONAP. Mr. Walters remarked that he was not sure whether ONAP was currently discussing this, but NAIHC is advocating for increased Indian Housing Block Grant program (“IHBG”) funding to address such increased needs for tribal housing units because of the pandemic.

The CARES bill also includes \$300 million in new funding for Indian housing programs, to remain available until September 30, 2024, to prevent, prepare for, and respond to coronavirus. This includes \$200 million to be allocated under the NAHASDA IHBG program (“IHBG CARES”) and \$100 million to be allocated under the ICDBG program (“ICDBG CARES”). Regarding the IHBG CARES funding, the funding allocations will be allocated through the IHBG formula, and the allocations will be based on 30.5% of the FY2020 IHBG formula for each tribe. (HUD’s allocation chart of the IHBG CARES funding is attached to this memo.) HUD says that they intend to send these funds out quickly. However, given that the \$200 million will not be enough during the current pandemic, NAIHC is continuing to advocate for additional funding. Additionally, NAIHC and the National Congress of American Indians (“NCAI”) are working collaboratively to press HUD to move the ICDBG CARES funding out as quickly as possible.

HUD is talking with housing groups in Washington D.C. and with regional groups to determine the changing needs of tribes and tribal housing programs during the pandemic. HUD has hosted two Q&A calls through which HUD staff has responded to tribal questions and concerns. HUD has also posed FAQs on its website that address questions and concerns about COVID-19, housing funding, and other issues. Similarly, NAIHC has a new page on its website on which it posts COVID-19 resources and tribal housing policies addressing COVID-19 issues. There are now models on this page for tribes to use as an example for updating their own housing policies. <http://naihc.net/covid-19-resource/>.

### ***B. Other Housing Legislation***

The FY2021 Appropriations process is currently ongoing. However, most of the work is now being done behind the scenes instead of through the usual hearings. NAIHC is continuing to work on Indian Country legislation throughout this time period and advocate for Indian Country needs outside of those caused by the COVID-19 pandemic. Legislation on Tribal HUD-VASH and NAHASDA is currently in a holding pattern, due to the current congressional recess. NAIHC will continue its advocacy and efforts on both bills with Congress when it returns.

The Continuum of Care bill would amend the McKinney-Vento Homeless Assistance Act to enable Indian Tribes and tribally designated housing entities to apply for, receive, and administer grants and subgrants under the Continuum of Care Program of the Department of Housing and Urban Development. Currently, tribes can only apply through a partnership with a state. The bill has passed the House and is currently sitting in the Senate Banking Committee. The bill's advocates are looking for more co-sponsors, particularly Republican co-sponsors, so that it has a balanced slate of sponsors.

### ***C. Questions and Answers***

Mr. Walters then opened up the call for questions and responded to each question, provided below.

- Regarding the ICDBG CARES Imminent Threat funding, will HUD use the normal ICDBG process to allocate this new funding? Will the new funding contain the same restrictions limiting the number of applications that a consortium can submit?
  - HUD has not provided an answer on that yet, but NAIHC will bring that question up with them to address.
- Given that CV4 will not focus on infrastructure, is there discussion about what an emergency preparedness plan looks like for Indian Country? As part of this, tribes need to be eligible for funding to provide temporary shelters and homeless shelters.

- The House Financial Services Committee Chairwoman Maxine Walters has released an infrastructure guide. NAIHC is working with her and other individuals on the hill to draft infrastructure language for whenever an infrastructure bill is discussed.
- Regarding the ICDBG grant, the normal process is that funds are allocated on a first-come-first-serve basis. This would cause a problem for tribes who are currently under stay-at-home orders who therefore cannot send out applications quickly. What is being done to remedy this for the ICDBG CARES funding?
  - Mr. Walters has discussed this issue with HUD. There will likely be limitations on the amount of funding awarded to each tribe which will allow more tribes to access the funding. HUD is streamlining the ICDBG CARES funding application and awards process to make it easier for tribes to submit applications in the midst of the disruptions caused by the pandemic.
- Regarding the Families First Coronavirus Response Act provisions addressing emergency paid sick leave, are tribal governments included in this bill?
  - NAIHC has asked this question but the federal government has not provided a clear answer on this as of yet. There are ongoing congressional and federal agency discussions on how the paid sick leave provisions will work. Mr. Walters is working with NAFOA and NCAI on this and will provide answers as soon as they are available.
- Is there any discussion of increasing the income limits for HUD's assisted housing programs, such as up to 130% for elders?
  - HUD has discussed such an increase but has not yet provided a direct answer.
- Are there any discussions with HUD on how it is administering the technical assistance ("TA") requests and providing training, given the ongoing problems with the delays in approvals for the TA request?
  - NAIHC is engaged in ongoing conversations with HUD regarding the TA request process. NAIHC will also consider how best to bring this up with Congress to address the continued problems and to find out how many TA requests are being approved and denied.
- When will HUD be sending out the CARES Act Implementation Notice and Waiver Notice?
  - HUD is still working these notices and will likely send them out soon.
- How should tribes spend any CARES Act funding they receive when they have not yet received any direction on funding reporting or eligible activities? Will tribes be penalized for not reporting on the use of the funds?

- Tribes should use funds through the services they are already providing, but should ensure that all CARES Act expenditures are tied to preventing, preparing for, and responding to the COVID-19 pandemic. However, Mr. Walters commented that HUD expects to be very flexible in evaluating tribes' use of CARES Act funds.
- Before COVID-19, HUD was discussing combining ICDBG two years into one. Will HUD extend the comment period for the proposal?
  - Because the proposal was not an agency rule, there is no hard deadline for commenting. Mr. Walters suggested that any individual with comments should submit them to HUD.

## **II. HUD ONAP Webinars and Update on CARES Act**

Various HUD regional offices have been providing webinars and updates on the CARES Act. We provide a summary of one of those, held on Wednesday, April 8, 2020, by the Northwest ONAP.

HUD ONAP offices are generally open for business but with the staff working from home. They are not receiving physical mail. Tribal housing program staff and management should call or email their local ONAP with any questions or concerns. Additionally, much of the communication in the future will need to be electronic, including communications about grant agreements. ONAP recommends that tribes and TDHEs should err on the side of caution and place the safety of staff, residents, and communities first when interpreting program requirements and standards in dealing with the ongoing pandemic.

### ***A. Reporting Requirements***

In an effort to provide some relief for Tribes impacted by COVID-19, ONAP is extending the due dates for certain reports. Effective immediately, ONAP is extending the original due date by 90 calendar days for the following:

- IHBG Annual Performance Reports
- Quarterly and Final Federal Financial Reports (SF-425) for all ONAP managed grants:
  - IHBG Formula and Competitive
  - ICDBG and ICDBG IT
  - ROSS
  - Tribal HUD-VASH
- FY2021 Indian Housing Plans (“IHPs”) (due July 15<sup>th</sup>)
- Tribal HUD-VASH Reports (HUD-50058)
- ICDBG Closeouts and Final Status and Evaluation Reports
- Responses to open findings for Audits

The 90-days extension currently applies to original due dates through **June 30, 2020**. ONAP is taking these actions pursuant to a March 19, 2020, Office of Management and Budget (OMB) Memorandum M-20-17, entitled, “Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) due to Loss of Operations.” Through this memo, OMB automatically extends the due date for audits required by Single Audit Act (chapter 75 of title 31, United States Code), implemented by 2 C.F.R. part 200, subpart F, by six (6) months from the normal due date. This applies to grantees that have fiscal year-ends through June 30, 2020.

If you have questions regarding the status of any of the above-referenced items, please contact your ONAP Specialist for further direction.

### ***B. CARES Act***

On Friday, April 3<sup>rd</sup>, HUD sent a press release to Tribes and TDHEs regarding the \$200 million CARES Act Funding. The press release and breakdown of funding is posted on [Codetalk](#).

The CARES Act requires recipients to use IHBG funds provided under the CARES Act to prevent, prepare for, and respond to COVID-19. This includes maintaining normal operations and funding eligible affordable housing activities under NAHASDA during the period the program is impacted by COVID-19. Additionally, the CARES Act provides flexibility in use of funding. Tribes and TDHEs have the opportunity to reallocate or repurpose IHBG or ICDBG funding for whatever needs there are for dealing with COVID-19. The CARES Act provides HUD with broad authority to waive statutes and regulations (with some exceptions) for housing authorities dealing with the pandemic. HUD expects to issue a PIH notice discussing the specific details of the waivers soon.

Regarding Section 184 mortgages, a 60-day foreclosure moratorium is in effect, which began on March 18<sup>th</sup>, 2020. Section 4024 of the CARES Act provides an additional temporary moratorium on evictions for non-payment of rent for federally backed mortgages. Further guidance from ONAP will be released shortly.

As noted above, the IHBG CARES Act funding will be allocated based on 30.5% of a tribe’s FY2020 IHBG formula. ONAP’s position is that the purpose of the funding is to prevent, prepare for, and respond to COVID-19. Tribes and TDHEs should make sure to tie all activities back to that purpose. A HUD Implementation Notice will be released soon, which will include information on required submittals for the funding and eligible activities. ONAP is going to require submission of a “short” IHP that can be filled out via an online fillable PDF. These short IHPs will have fewer sections than normal, ONAP promises to process the IHPs quickly in conjunction. However, ONAP is also going to require signing certain as-yet-unspecified “grant documents” before the funds are released.

ONAP has generated a list of activities for which the IHBG CARES funds can and cannot be used, set out below.

**Activities for which IHBG CARES Act funds can be used**

- Direct costs related to prevention, preparation, and response to COVID-19.
- Paying staff salaries and expenses for planning, response, and administrative leave.
- Purchases of personal protective equipment necessary for TDHE staff to administer the IHBG program.
- Purchase and use of cleaning supplies to disinfect homes of residents, common areas, and housing-related public facilities, and other public spaces like playgrounds.
- Purchase and use of supplies and materials to promote safety of residents and tribal housing staff.
- Costs to upgrade equipment or technology to facilitate electronic communications and reduce reliance on in-person meetings and transactions.
- Temporary relocation assistance to families impacted by COVID-19 or to prevent exposure or spread of the virus.
- Housing services to educate residents on prevention and remediation measures to limit risks associated with COVID-19, and other related public health education initiatives.
- Costs of establishing and operating facilities, such as isolation centers, to house persons with COVID-19.
- Increased rental subsidies under tenant-based rental assistance programs (i.e. if a tribe is currently covering 70% of rent, with the new subsidy, the tribe would be able to provide 80% or 90% of the rent.)
- Emergency assistance to families at risk of homelessness.
- Additional options per the upcoming Implementation Notice.

**Activities for which CARES Act IHBG funds cannot be used**

- Direct reimbursement of foregone rents.
  - No direct reimbursement to tribes for rents not collected or for lost revenue.
  - Tribes can be reimbursed for direct costs of normal operations, such as dipping into savings or other program budgets just to keep doors open because of the lack of program income coming in. To do this, tribes just have to establish their utilization of other funding services and document such use. HUD will be providing further guidance on this in the coming weeks.
- Additional restrictions per upcoming implementation notice.

ONAP recommends that in order to prepare for the additional IHBG CARES funding, tribes should take the following actions:

- Identify and track incurred and future expenses;
- Identify needs for both present and future, especially considering that pandemic might continue for longer than currently expected; and

- Plan for the internal review and approval process for new grants and housing plans (i.e. if the grants and housing plans need to be approved by the tribal council or the housing board, tribes should determine how to expedite this process).

There is no further specific word on the \$100 million available to tribes through the ICDBG CARES funding. As with the IHBG CARES funding, the purpose is to prevent, prepare for, and respond to COVID-19. The ICDBG CARES grants will have a similar “feel” to standard ICDBG grants. The goal of the ICDBG CARES funding will likely be to assist with major facilities such as new hospitals and quarantine facilities. HUD will be releasing an Implementation Notice soon that will provide further information.

Tribes and TDHEs can access numerous resources related to addressing COVID-19 through the following avenues:

- Codetalk website: <https://www.hud.gov/codetalk>
- HUD website: <https://www.hud.gov/coronavirus> (Includes everything COVID-19 related)
  - Q&As
  - Tribal leaders letters
  - Implementation notices (as published)
  - Section 184 information
  - Webinars

### *C. Q&As from Callers*

While ONAP has provided a set of FAQs on its website, the last time it was updated was March 30. Some questions and answers have come up during the webinar discussions, including the following:

- Can TDHEs provide supplies to tenants?
  - Yes, as long as it fits with the purpose of preventing, preparing for, and responding to COVID-19.
- Can tribes use future funds to maintain capabilities of Wi-Fi capabilities that are enhanced through CARES Act funding?
  - Yes, tribes can, as long as IHBG funding is used to serve affordable housing programs. Wi-Fi is a normal utility expense, so carrying it forward as an expense in the future is not an issue.
- Are salaries covered under the CARES Act? If so, would salaries still be coded under administrative expenses and thus subject to the 20% cap?
  - If individuals are on administrative leave, their salaries count toward administrative costs and the cap does apply. However, if tribes are pushing up



against the cap, ONAP will allow the tribe to go over, if the tribe submits a waiver request to do so (the Regional Administrator described that doing so would be a “no brainer” for HUD). For other costs for people working from home, tribes should allocate the costs according to normal accounting processes.

- Do the income limits still apply to providing services during the pandemic?
  - Current residents of affordable housing who were eligible at the time they joined the assistance program can continue to receive services. If a tribe develops a new program through IHBG and plans on serving people over 100% of income level, the tribe should do so if it is needed for the safety of community. Tribes should submit model activity requests for new activities or to serve individuals with income above 100% of the AMI. HUD has an expedited approval process to ensure that tribes can serve their community members as quickly as possible. It is still uncertain how this will work under the CARES Act, but the Implementation Notice will provide such details.
- Does HUD have any guidance for how best to respond to borrowers asking about forbearance of 184 mortgages?
  - ONAP will put together a formal response to this question and will provide the information on a FAQ on its website.
- Is it okay to use RVs and trailers for quarantine units?
  - If this is a viable option and the tribe has need for such units, then the tribe should do so and use any means available to help people and keep its community safe.
- Has there been any discussion on post-virus stimulus legislation, specifically on funding for shovel-ready projects?
  - ONAP has not heard anything yet.
- Are there any updates on when HUD 184 mortgage payments will come through?
  - ONAP encourages homeowners to reach out to their lending institution. There is a moratorium on evictions but more information will be coming out soon on the payments. ONAP will be sending out a Dear Lender Letter in the coming weeks that will address forbearances. However, it was recommended that homeowners should not count on their utility bills being forgiven simply because the payments are currently in forbearance. Once the forbearance ends and the bills become due, it could be difficult to pay all the bills at once and homeowners should not count on the bills being forgiven.
- Why would tribes want to ask for forbearance for housing mortgages for individuals? Why not use the stimulus money to make payments on house mortgages for individual homeowners?

- Tribes should look at their housing program guidelines to determine if this is a viable option. ONAP recommends making such payments in emergency situations where someone is going to lose home. Tribes will likely want to make such payments need-based. The purpose is to keep people in homes and prevent them from getting into a situation that they cannot escape later.

Please note that the most recent round of ONAP COVID FAQs is located on [Codetalk](#) and will be updated frequently. The FAQs contain answers to additional questions on responding to COVID-19.

#### ***D. Tribal Housing Best Practices and Strategies During Current Pandemic***

HUD ONAP has also invited tribes and TDHEs to share some of their best practices with others. During the Northwest ONAP call, the following tribes/TDHEs offered some of the steps they are taking.

##### **Muckleshoot**

- The Housing Authority uses its housing newsletter to share COVID-19 facts and CDC guidelines with tenants and homeowners.

##### **Siletz Tribe**

- No foot traffic is allowed in the tribal offices.
- The Siletz Tribal Housing Department is not accepting cash payments; all checks and money orders are deposited in a drop box. Tenants can still pay by phone.
- Only one person works in the office each day. Maintenance goes in each morning to clean the whole facility.
- All staff use VPN for remote access of computers and files.
- Administrative leave is available to all employees.
- Playgrounds are closed.
- Housing payments are waived for two months.
- All meetings are conducted through telephone calls. All orders are done through electronic systems and electronic signatures.
- Tribal elders are worried and isolated and grow more worried when the housing office is closed. The Housing Department is therefore doing extra outreach to check in with all elders.
- The Housing Department is helping the homeless population by connecting with the state of Oregon, through which the Tribe can access Oregon's hotel voucher program. This allows tribal members to access temporary shelter at local hotels.
- Maintenance sanitizes all vehicles every day.
- The Housing Department is only doing emergency repairs to housing units.

- The emergency housing policy helps homeless individuals by allowing the Housing Department to pay them \$1500 to cover emergency needs. The Housing Department may increase this amount to as much as \$7000 to cover rent in the coming months.

### **Lummi Tribe**

- The Lummi Tribe Housing Authority forgave three months' rent for all tenants.
- The office is still open, as everyone is able to stay far away from each other. Half of the staff works in the morning, while the other half works in the afternoon. The office doors are only open for one hour for tenants to do laundry.
- The Housing Authority has stopped all inspections, move-ins, and move-outs.
- All communications are electronic.
- The public health team has done a great job in responding and preparing to the pandemic. For example, it has turned the fitness center into a hospital ward. The Housing Authority director has a call with the health team every day to provide updates and to collaborate on solutions in response to new and ongoing issues.
- The Tribe has teamed up with outside groups to increase cell towers and eventually build a fixed wireless network to allow for tele-education and tele-working.
- The tribe provides 800 breakfasts and lunches every day from the youth wellness program. All of the families go to a certain location and sit in their cars, while tribal workers deliver food to each car.

### **Nez Perce Tribe**

- The Housing Authority provided all tenants with relief credits for rent in the amount of \$100 for both March and April. The Housing Authority took this course of action because of the uncertainty as to how long the crisis will continue.
- Most tribal employees are paid to stay at home.
- Tenants are continuing to pay utility bills and rent voluntarily.
- The Housing Authority Director sits on the tribal council emergency response team, allowing them to work with the response team to provide solutions to new problems that arise.
- The Tribe's finance committee is looking for other grants and funding streams to help during the current crisis.

### **Colville Tribes**

- Only essential staff is currently working. The Housing Authority has closed the office to public access.
- The Housing Authority is in the process of setting up an online debit card payment system, which will be very cost effective moving toward.
- The Housing Authority created a housing authority Facebook page on which it provides resources and information.

- The Housing Authority has moved to a four day work week to create social distancing.
- A Colville Tribes' webpage hosts all COVID-19 related information for tribal members: <https://www.colvilletribes.com/novel-coronavirus>
- The Tribe's reservation has always had high unemployment and low income levels, which has led to further challenges because of the increased costs for food and other essential items.
- The tribal food program has therefore increased food and hygiene vouchers for tribal members.
- The Tribe is also earmarking TARA allocations to provide energy assistance for tribal members.

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