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MEMORANDUM

May 1, 2020

To: Tribal Housing Clients
Fr:  HOBBS, STRAUS, DEAN & WALKER, LLP
Re: **HUD Conference Call on IHBG-CARES Act Funding**

HUD ONAP held another conference call today to present information on and answer questions about the IHBG-CARES Act funding. This memo summarizes the general overview and 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. We are also attaching an excerpt of the power point slideshow that Mr. Atallah used for his initial remarks (we did not include the introductory slides).

I. Deputy Assistant Secretary Heidi Frechette Opening Remarks

After a brief introduction by Assistant Secretary Kurtz, Deputy Assistant Secretary Frechette provided an initial overview. She noted that the CARES Act provided for \$300 million in supplement funding for tribes and TDHEs: \$200 million in supplement IHBG funding and \$100 million in ICDBG Imminent Threat funding. ONAP is working with all hands on deck to get this funding allocated and distributed. We have been given broad waiver authority and flexibility with funds provided in the CARES Act as well as IHBG formula funds awarded in FY2020. She also pointed out the following:

- HUD ONAP published the IHBG-CARES Act allocation amounts within a week after CARES Act enacted.
- On April 10, OPIH issued Notice 2020-05, setting out HUD's initial waivers and alternative requirements
- On April 27, HUD ONAP issued Notice 2020-06, the IHBG-CARES implementation notice, along with the abbreviated IHP and guidance for completing and submitting that form.
- ONAP is publishing and updating COVID-19 and CARES Act FAQs on the Codetalk website.
- ONAP is also holding regional webinars to provide information and answer questions, and holding frequent calls with tribal leaders and housing organizations.

ONAP is also working on the implementation notice for the ICDBG-CARES funding, and they plan to issue it soon. ONAP received a number of comments from tribes and TDHEs, and they are carefully reviewing and taking those comments under consideration.

She then turned the meeting over to Jad Atallah.

II. Introductory Slide Presentation

The IHBG-CARES funding totals \$200 million, and will be allocated among tribes/TDHEs according to the same proportions as in the FY2020 IHBG formula funding allocation. To obtain that funding, the tribe/TDHE must submit the “abbreviated” IHP, which HUD released last week along with Implementation Notice OPIH 2020-06. We covered the form and the Implementation Notice in our last memorandum dated April 22. If you do not have a copy of that memo, please let us know and we can send you another copy.

The eligible uses of the IHBG-CARES funding is to prevent, prepare for, and respond to the COVID-19 crisis. This set of uses also includes maintaining normal operations and funding otherwise eligible NAHASDA activities during the period the program is impacted by the coronavirus. These funds can be used for short-term, medium-term, and long-term activities, projects, or programs to maintain normal operations, but HUD would like to emphasize focusing on short-term and medium term projects, since those are more likely to fit within the eligible activities for these funds. Longer-term projects may invite more scrutiny. The power point slide show, as well as the IHBG-CARES funding implementation notice (OPIH 2020-06) also contain illustrative lists of eligible activities, which Mr. Atallah stressed were provided as examples, and not as a complete list of such activities. This list included:

- Activities that would prevent individuals from remaining or becoming homeless and allow tribes to rapidly rehouse homeless individuals.
- Construction of structures that can serve as temporary emergency shelters.
- Purchasing and distributing PPEs.
- Purchasing and distributing cleaning products.
- Revising approval process for policies and procedure to limit person to person contact.
- Paying staff salaries, including those who are at home and unable to telecommute, but who are required or advised to shelter in place.
- Temporary payment of tenant and homebuyer utilities, rents, and mortgage payments.
- Construction of temporary or permanent isolation centers.
- Acquisition, construction, conversion or rehabilitation of community facility for use to address COVID-19.
- Hazard pay for essential workers.
- Transportation costs of staff to perform IHBG program functions.
- Purchasing and distributing of water, food, etc.
- Provide essential housing services to shelter residents.

- Using grant funding to pay for eligible, normal IHBG operations costs.

Mr. Atallah encouraged participants to contact their regional ONAP offices with specific questions about specific activities, and to consider submitting a particular activity as a “model activity” if there is a concern that it does not fit within one of the typical categories of IHBG-funded services.

Using IHBG-CARES Act funds for “maintaining normal operations.” One of the key points that Mr. Atallah emphasized again 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 IHBG-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.

Duplication of benefits. The use of IHBG-CARES funding is governed by the Stafford Act, which prohibits duplication of federal benefits. Therefore, before you expend IHBG-CARES grant funds, tribes/TDHEs have an obligation under federal law to carry out a “duplication of benefits” analysis, to ensure that these funds are not used for any activity that will be covered by other funding, such as insurance proceeds or other federal sources. In other words, do not use the IHBG-CARES funds to pay for expenditures that are being paid for through other sources. There are a number of different sources of funds going to tribes under the CARES Act to address COVID-19, so there is a significant chance of duplicate assistance. HUD will be providing additional guidance on this point.

Reimbursement of costs. This is an issue about which HUD has received many questions. IHBG-CARES funds may be used to cover or reimburse costs for any eligible or allowable costs paid by the tribe/TDHE. But you cannot reimburse expenditures of federal funds with these federal funds. You must expend these funds consistent with the applicable procurement and environmental review requirements. Many of the expenditures contemplated (rental assistance, purchase of PPE, food and supplies) will not require environmental review. For those that do (for example, construction or acquisition of emergency shelters), HUD is going to provide guidance on the “emergency” environmental review required. You can go back prior to the date of the CARES Act for the costs to be reimbursed, but no further than January 21, 2020 (the date the first COVID-19 case in the U.S. was identified). You should carefully document any costs incurred for which you are seeking reimbursement.

Use of FY 2020 IHBG for COVID-19. The CARES Act also allows tribes/TDHEs to reprogram FY 2020 IHBG funding to prevent, prepare for, and respond to COVID-19. The waivers and alternative requirements in OPIH Notice 2020-05 apply to the FY 2020 IHBG

funding. You will need to amend your FY 2020 IHP. However, even before you amend the IHP, you should let your area ONAP know the amount of funding you are going to reprogram, so that they can pull those funds from your regular IHBG account and place it in a specially-designated COVID-19 account. Tracking the funds used for these purposes, and under which the waivers will apply, is required, and HUD will need to move these funds into special accounts to do so.

Abbreviated IHP/APR. When you use this form, hit the IHBG-CARES button, which will amend certain fields so that it is specific to CARES. HUD normally has 30 days to act on an IHP, but they have set 15 days for reviewing and approving the abbreviated IHP, and they will take all steps they can to review and respond earlier than that. Upon approval, they will issue an award letter and a package (grant agreement, grant addendum, and grant terms and conditions) that must be signed and returned for the funds to be released. All these documents will be in electronic format and can be signed, scanned and returned to ONAP electronically. The funds will be available to draw from LOCCS once the fully executed grant agreement is received and processed by HUD. If the abbreviated IHP is noncompliant, ONAP will request the recipient to revise and resubmit ASAP, and will provide technical assistance to modify, as appropriate. The abbreviated IHP may be subsequently amended if necessary, provided such activities or programs in the amendments are eligible. You should maintain all documents with “wet” signatures in your records.

Reporting requirements. The same general reporting requirements will apply. You will be required to submit the SF 425 quarterly. You will be required to submit the abbreviated APR at the end of the program year (for the uses associated with the IHBG-CARES funding. Note that the CARES Act contains a provision that applies to all entities who receive \$150,000 or more in CARES Act funding, requiring that the recipient track funds received, contracts and jobs created. This is a government wide requirement, and further information will be forthcoming.

III. Questions and Answers

The following sections show the questions asked by participants in the call, followed by the answers by Mr. Atallah.

Can IHBG-CARES funding be used to provide payments to cover mortgage payments for homeowners who are struggling financially, but who are otherwise ineligible?

IHBG CARES funding is intended to prevent homelessness as a means of stopping or slowing the spread of the coronavirus, and if such payments are made to address that purpose, they would be permissible. However, the assistance for ineligible families must be temporary, and it must be tied to protecting the low-income, eligible participants from the spread of the virus. HUD will be providing additional guidance on this point, as it has been raised by many tribes and TDHEs. Be cautious about providing assistance to non-eligible households, and consult with your area ONAP office.

PIH notice 2020-26 discusses reimbursement of costs incurred by IHBG recipient; can TDHEs use IHBG CARES funds to reimburse IHBG funding that they expended on COVID-19?

This is also a question that comes up frequently. The answer is to think of it this way: you cannot reimburse any federal funding source with these funds; that would be considered “duplicative” benefits and is prohibited by the Stafford Act. This includes IHBG, ICDBG and program income, as well as any other funding source. You can reimburse the tribe/TDHE for the expenditure of tribal funds or non-program income. HUD will be putting out additional guidance.

Can tribes/TDHEs issue food vouchers for use at a local grocery store, if the tribe/TDHE has worked with that grocery store to limit what can be purchased with the voucher, in a manner similar to food stamps?

Possibly; would advise being careful about anything similar to a gift card (which is not permitted). You would need to be able to document the end use of funds to make sure used for eligible use. If there is an arrangement with grocery store that limits the use and you can obtain and keep documentation showing how the funds were spent, that would likely be ok.

Is there a waiver for using funds to help homeless individuals if they are ineligible because of income levels?

If someone is homeless, they are presumed to be low income so you can use funds for them. Moreover, you can serve such individuals even if they are non-low-income if the assistance is temporary. Finally, the waivers in OPIH Notice 2020-05 include alternative methods of verifying income eligibility, including “self-certification.” These alternative measures are designed to minimize person-to-person contact.

Has or will HUD provide a waiver for criminal background checks for persons for housing?

There is no HUD requirement for a criminal background check, therefore no need for a HUD waiver. Criminal background checks are permitted by NAHASDA and the regulations, but not required. Whether to use them, or to waive them in certain circumstances such as COVID-19, is a tribal/TDHE determination.

Before acquiring a structure for preventing COVID-19 (such as for a temporary shelter), does a tribe/TDHE need a waiver to skip normal procurement procedures?

You would still need to follow the procurement requirements of 2 CFR part 200. Mr. Atallah pointed to 2 CFR 200.318, which he said contains expedited procurement procedures during an emergency or disaster. While section 200.318 sets out just the general procurement requirements, which require competitive procurement overall. However, section 200.320(f) allows for procurement by noncompetitive proposals under certain circumstances, including “the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.”

The IHBG-CARES funding may be used during “the period of time that the IHBG program is impacted by COVID-19.” How will HUD determine what that period of time is?

HUD does not know the answer, because no one knows how pandemic will play out. It is "impossible" to answer this question right now. However, the money is not "forever," but is intended for use during the current pandemic, so HUD is encouraging expeditious expenditure of these funds.

If a Tribe/TDHE chooses to use require staff to stay at home, either to work from home, or not to work, can it use FY 2020 IHBG funding or IHBG-CARES funding to pay those salaries?

Yes, both these sources of funding can be used for this purpose. Work with your area staff on this issue. If you are paying administrative leave (i.e., the staff are being paid to stay home but are not working), that would be considered planning and administration, and if using the funds in this way will cause your program to exceed the 20% cap for such expenditures, file a request for a waiver of that cap.

Will HUD be able to provide tribes/TDHEs with list of agencies providing funds for tribes during the COVID-19 crisis?

Yes, we should be able to put together this list and post it. We have been developing an informal list for internal use already.

If a tribe used IHBG-CARES funds for construction costs for a shelter for persons during the COVID-19 pandemic, can tribes maintain this shelter for regular housing after pandemic is over?

Yes, the structure can be used for housing after pandemic, so long as you are serving NAHASDA-eligible families and complying with other applicable NAHASDA requirements.

We are having trouble accessing abbreviated IHP; is there any guidance on accessing it?

Yes, there is guidance and other resources available on Codetalk. You should be able to access it using the Internet Explorer web browser, but not everyone has been able to access it using that browser. We suggest downloading the newest, free version of Adobe Acrobat if you are unable to access it. We will be providing updated guidance on technical issues using the abbreviated IHP.

Will the slideshow presented today be available?

Yes it will be posted on Codetalk.

Can TDHEs use funds for non-TDHE homes, for non-low income families for tribal members?

It depends on what funds are for, but you can use for non-TDHE homes. There are some parameters when assisting non-low income families; please read the waivers for serving non-low income families and consult with your area ONAP staff.

ICDBG-CARES waivers will allow us to use these funds for paying rental and mortgage assistance. Will we have to require that the program participants pay a certain percentage of the monthly rent or mortgage payment?

This question concerns the ICDBG-CARES funding, not the IHBG, and we are in the process of finalizing our implementation notice. However, under current program rules, you can use this funding to provide this kind of assistance for up to six (6) months (original waiver was for three (3) months but that has been extended). There is no requirement for the tenant/homebuyer to make any kind of matching or minimum payment. The tribe/TDHE can pay the entire amount.

If we are currently paying staff with IHBG funds, can we seek reimbursement through IHBG-CARES funds?

Mr. Atallah referred back to his earlier comments on use of IHBG-CARES funds for reimbursements. You can only reimburse expenditures of non-federal funds (i.e., tribal funds or non-program income). You cannot reimburse expenditures of federal funds or program income.

Some sources indicate congress may allocate more funds for mortgage assistance; do you have any information about this?

We will be tracking this, but do not know anything specific at this time.

Can you provide us with guidance on using IHBG-CARES funding for equipment purchases, such as modular buildings for quarantine uses, and for vehicles used to distribute supplies?

Using IHBG-CARES funding for purchasing modular structures for quarantining is acceptable. Purchasing vehicles and other equipment will require looking at the issue on a case-by-case basis. It is authorized, but it is limited in scope. We suggest that you work with your area ONAP staff to examine specific purchases.

Will the required SF 425 filings on the IHBG-CARES funding be extended

The SF 425 for the IHBG-CARES funding will be required to be filed at same time the normal SF 425 is filed; the same extensions will apply. ONAP will be considering further extensions as the COVID-19 pandemic progresses, and if those are granted, the new timelines will apply.

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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.