



MEMORANDUM

May 15, 2020

To: Tribal Housing Clients

From: Ed Clay Goodman

Re: **ICDBG-CARES Act Funding Implementation Notice**

On May 15, 2020, the U.S. Department of Housing and Urban Development (HUD) issued an Implementation Notice (Notice PIH 2020-11) for the Indian Community Development Block Grant (ICDBG) Imminent Threat provided under the CARES Act (ICDBG-CARES), and held a teleconference for Tribes and Tribal organizations on the Implementation Notice and application process. The call has been recorded and will be uploaded on the HUD Office of Native American Programs (ONAP) website as an unlisted YouTube link within a week after the call. This memo provides a summary of the call and the ICDBG-CARES application process. Also attached is the Implementation Notice and a copy of the slides presented during the call.

I. Opening Presentation

HUD Assistant Secretary Hunter Kurtz, ONAP Deputy Assistant Secretary Heidi Frechette, and Jad Atallah, Director of Performance and Planning at ONAP, each gave brief opening remarks. Mr. Atallah then walked through Notice guidelines and application submission process.

a. ICDBG-CARES Implementation Notice Published

The ICDBG-CARES Implementation Notice (“Notice”) provides instructions on how to apply for ICDBG-CARES funding and other program requirements. This Notice can be found at: www.hud.gov/coronavirus and www.hud.gov/codetalk.

HUD will begin accepting applications on June 1, 2020 at 3:00 p.m. Eastern Daylight Time (EDT) on a first-come, first-served basis. Applications must be submitted by email to HUD at this email address: ICDBGCARES@hud.gov. Applications sent to the Area ONAP office, or anywhere aside from this email address, will not be acted upon. Applications submitted prior to this date and time will not be accepted and will need to be resubmitted. HUD encouraged applicants to thoroughly review the Notice in its entirety to ensure that a complete application is sent to ICDBGCARES@hud.gov.

HUD's goal in crafting this notice is to streamline the application process as much as possible, while ensuring that all ICDBG-CARES funds will be used to prevent, prepare for, and respond to COVID-19, as required under the CARES Act. HUD anticipates a lot of interest and encourages Indian tribes or approved Tribal organizations to submit their application as soon as the application window opens. Mr. Atallah stated that HUD is working to allocate this funding as quickly as possible.

b. CARES Act Background

Mr. Atallah noted that the ICDBG-CARES Grant Program (Public Law 116-136) provides an additional \$100 million in ICDBG "imminent threat" funding for qualified applicants. Funding can be used for emergencies that constitute an imminent threat to the health and safety of community members. The funding must be used to prevent, prepare for, and respond to COVID-19.

The appropriations language for the ICDBG-CARES funding does not state that the funding can be used for maintaining normal operations, so tribes cannot use the fund for such operations. However, HUD still has some regular ICDBG funding from FY19/FY20 for tribes to use for maintaining normal operations. Mr. Atallah encouraged tribes to reach out to their Area ONAP offices to inquire about accessing this funding. Regarding regular ICDBG Imminent Threat Grants, applications may be submitted at any time to the Area ONAP as specified in the FY19/FY20 ICDBG Notice of Funding Activity (NOFA) and ONAP program guidance 2018-04.

On April 10, 2020, HUD issued PIH Notice 2020-05, which outlines various waivers and alternative requirements that apply to ICDBG-CARES grants and FY2020 ICDBG funds. The ICDBG-CARES funding includes waivers for facilitating or expediting the use of the ICDBG-CARES grant funds. The waivers also apply to certain funds awarded under the ICDBG 19/20 NOFA. Those waivers include:

1. Removal of the Public Service 15 Percent Cap under FY2020 ICDBG grants;
2. Rental assistance, utility assistance, food, clothing, and other emergency assistance;
3. Purchase of equipment;
4. Operating expenses for public facilities; and
5. New housing construction by tribes.

ICDBG grantees must ensure that ICDBG funds are used to supplement other federal sources of funding for this purpose, including funding provided by the Indian Health Service, and are not used to supplant such funding.

c. Eligible Applicants

Indian tribes and Tribal organizations must fit the same criteria for eligible applicants provided in the ICDBG regulations at 24 C.F.R. 1003.45. The regulations provide that eligible applicants include: “[a]ny Indian tribe, band, group, or nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaska native village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301, et seq.)” Additionally, “tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian tribe, band, group, nation, or Alaska Native village when one or more of these entities have authorized the Tribal organization to do so through concurring resolutions.” Thus, Tribally Designated Housing Entities (TDHEs) can apply for the ICDBG-CARES imminent threat funds, but would need a resolution authorizing them to do so from their respective tribes.

If the tribal organization is not able to secure an appropriate tribal resolution authorizing it to apply for an ICDBG-CARES grant on behalf of the Indian tribe(s), the tribal organization can apply anyway on behalf of tribe, but must request a waiver of the resolution requirement in 24 C.F.R. 1003.5(b) in the application. HUD will consider the application incomplete if it does not include this waiver request with an accompanying justification for why there is good cause for HUD to grant the waiver request. Additionally, the waiver request must:

1. Provide HUD with information on any other steps it has taken to consult with the beneficiary Indian tribe(s) on the contents of its application; and
2. Provide any other relevant information demonstrating why it is not practical or safe to secure a tribal resolution.

If HUD approves funding for the application, it will concurrently grant the waiver of 24 C.F.R. 1003.5(b) and will make the award to the tribal organization. However, any tribal organization that receives an award must then consult with the beneficiary Indian tribe(s) that it serves, in a manner that is feasible and when it is safe and practical to do so. The tribal organization must also submit to HUD a tribal resolution authorizing their application for an ICDBG-CARES grant at a later date.

d. Content of ICDBG-CARES Application

The ICDBG-CARES application **must** include the following to be considered complete and maintain its place in the application submission queue:

1. Standard Form-424 (Application for Federal Assistance), available at

- <https://www.grants.gov/forms/sf-424-familyl.html>. Select “Application for Federal Assistance (SF-424)” from the list of forms. Click on “Enable all features” if prompted to do so. This may be necessary for the form to appear.
2. HUD 2880 (Application/Disclosure/Update Report).
 3. HUD 4123 (Cost Summary).
 4. Project Description Summary. Mr. Atallah noted that this section is the most important for tribes to address. The information submitted must include:
 - a. A written description of the activities, projects, or programs that the applicant plans to undertake, and how the activities, projects, or programs are tied to preventing, preparing for, and/or responding to COVID-19.
 - b. A written statement describing how the funded activities will be carried out successfully, timely, and within the proposed timeline, and in compliance with program requirements.
 - c. A narrative description of the implementation timeline (as also reflected in the HUD-4125 (implementation schedule)).
 - i. HUD is seeking to fund emergency activities, so tribes and tribal organizations can fund construction projects. However, HUD is looking for activities that can be carried out in reasonable time so that they can be tied to the COVID-19 emergency.
 - ii. Applicants should be mindful to propose appropriate implementation timelines. Mr. Atallah noted that HUD reserves the right to reject activities, projects, or programs with implementation timelines that are so lengthy that HUD determines, based on its best judgment and discretion, that the activities, projects, or programs proposed cannot be justified as reasonably preventing, preparing for, and responding to COVID-19.
 - iii. If HUD questions the proposed timelines, HUD will notify the applicant of this deficiency and will work with the applicant to ensure that the revised implantation schedule is reasonably set to allow the applicant to reasonably prevent, prepare for, and respond to COVID-19.
 - iv. If the applicant fails to revise the implementation schedule to HUD’s satisfaction, HUD reserves the right to only fund a portion of the application or reject the entire application and award an ICDBG-CARES grant to the next fundable applicant.
 - v. If an otherwise complete application includes a questioned implementation plan, they will retain their original date stamp while HUD works with the applicant to revise the proposed implementation schedule.

- vi. Applicants with an implementation schedule longer than 12 months will be accepted, but only if the applicant provides HUD with a justification, including supporting documentation, demonstrating why the proposed timeline is reasonably set to prevent, prepare for, and respond to COVID-19.
 - vii. HUD will consider all relevant factors including, but not limited to: the nature of the activities, projects, or programs being proposed, the size of the ICDBG-CARES grant requested, any disruption in supply chains, barriers caused by a short or disrupted construction season, infrastructure challenges, impact of COVID-19 on the applicant's operations and its ability to carry out activities, projects, or programs more expeditiously.
 - viii. New housing construction projects: HUD will only fund applications that propose to carry out new housing construction that is clearly designed to prevent, prepare for, and respond to COVID-19 (e.g. to reduce overcrowding) and that the applicant plans to carry out expeditiously
 - ix. Economic development projects due to other available CARES Act resources, HUD encourages non-economic development projects before submitting an ICDBG-CARES application to carry out economic development projects. HUD will consider funding economic development projects only after ICDBG-CARES activities are fully funded first, and if ICDBG-CARES funding remains available.
5. HUD 4125 (implementation schedule). Upon a finding of good cause, HUD may approve an applicant's request to revise the implementation schedule at a later date, in the event of a reasonable delay.
 6. Detailed budget information, including any pre-award costs incurred between January 21, 2020 and now for which the applicant seeks reimbursement. The application must include documentation supporting those reimbursable costs. HUD may revise the January 21, 2020 date in the future in a HUD-issue notice, depending on whether the Centers for Disease Control and Prevention (CDC) subsequently revises its data with respect to the date of the first confirmed case of COVID-19 in the United States.
 7. Waiver request (tribal organizations only). If a tribal organization is unable to obtain a tribal resolution due to sheltering-in-place orders, the applicant must include a request to HUD to waive the tribal resolution requirement in 24 C.F.R. 1003.5(b) along with a justification showing that good cause exists for HUD to waive this requirement.

e. Funding criteria and requirements

HUD streamlined the application process while also ensuring that ICDBG-CARES grant funds will be used to prevent, prepare for, and respond to COVID-19. Public meetings are not required before applying for ICDBG-CARES grant funding. However, Tribes and tribal organizations must seek some sort of feedback from their citizens, including posting information online stating that they plan to apply for ICDBG-CARES funds. The tribes and tribal organization must accept citizen feedback and consider comments received.

The eligible purposes of the application must be to prevent, prepare for, and respond to COVID-19, for emergencies that constitute imminent threats to health and safety. HUD will only fund ICDBG-CARES applications that propose to carry out projects and activities that meet one or more of the eligible purposes.

The urgency and immediacy of the threat need not be independently verified before approval of an application. The urgency and immediacy of the threat will be presumed by HUD, unless HUD has evidence to the contrary. Additionally, applicants need not demonstrate that COVID-19 is a non-recurring imminent threat and that it has an impact on an entire service area. HUD will presume these criteria are met unless HUD has evidence to the contrary.

Applicants do not have to demonstrate that other tribal funding sources cannot be made available to alleviate the threat. However, they must coordinate locally and with other federal agencies to ensure that funds are used appropriately to address gaps in funding, avoid unnecessary overlap in effort, and avoid any duplication of benefits. Tribes must eliminate duplication of benefits by ensuring that federal financial assistance is not provided for the same costs paid by any other source or by private insurance.

Regarding program income, ICDBG-CARES grantees may not expend more than 20% of their grant amount plus program income on administration and planning expenses. Any program income derived from the use of ICDBG-CARES grants will be considered program income and must be spent only on eligible ICDBG-CARES program activities. HUD will provide instructions to the ICDBG-CARES grantee on the disposition of such program income at the time the closeout agreement is signed. (24 C.F.R. 1003.508).

ICDBG-CARES grant ceilings are based on the amount of funding a tribe or TDHE received under the IHBG-CARES funding allocation, as follows:

IHBG-CARES Funding Formula	Grant Ceiling
More than \$2 million	\$3 million
More than \$750,000 but less than \$2 million	\$1.5 million
Less than \$750,000	\$900,000

The grant ceilings are based on feedback received from tribes and TDHEs. The ceilings are based on the amount of funds each Indian tribe or TDHE received under the IHBG-CARES program. The IHBG-CARES formula allocations are available at https://www.hud.gov/sites/dfiles/PIH/documents/IHBG-CARES_Formula_Allocations_4.3.20%20.pdf

Lead based paint requirements and environmental requirements apply to all ICDBG-CARES program activities. HUD does not have authority to waive these requirements. Activities under this NOFA are subject to the environmental review provisions set out at 24 C.F.R. 1003.401 and 24 C.F.R. Part 58.

f. Eligible purposes

As stated above, applicants must ensure that all proposed activities, projects, and programs can be tie to one of three eligible purpose: prevent, prepare for, and respond to COVID-19. Short-term and long-term activities that meet the purposes of the CARES Act include reducing or mitigating short-term, medium-term, and longer-term risks and vulnerabilities of the tribal communities to COVID-19. HUD encourages ICDBG-CARES grantees to prioritize expending these funds as soon as possible given the ongoing COVID-19 national emergency. HUD reserves the right to reject activities, projects, or programs with implementation timelines that are so lengthy that HUD determines that the projects and activities cannot be justified as reasonably preventing, preparing for, or responding to COVID-19.

Some activities, depending on the context, do not always obviously fit under one or more of the below categories. Tribes should use their best judgment to tie an activity to one or more of the categories. ICDBG-CARES grants do not have to comply with the primary objective of the Housing and Community Development Act of 1974, which requires that no less than 70% of expenditures of the grant must be for activities that meet the criteria set forth in 24 C.F.R. 1003.208(a)–(d). Funds can therefore be used to assist moderate and over income families. Examples of activates, projects, or programs that could be funded, provided that they meet one or more of the above eligible CARES Act

purposes, include but are not limited to the following:

1. **Housing.** Applicants may acquire, construct, or rehabilitate housing when carried out expeditiously to prevent, prepare for, and respond to COVID-19. Examples include:
 - a. Rehabilitation of, and other improvements to, housing to prepare units to be used to temporarily house persons that need to be quarantined or placed under a shelter-in-place order.
 - b. Rehabilitation of housing to improve ventilation to reduce the risks of COVID-19.
 - c. New construction of housing, including tiny homes, which such construction is done expeditiously and carried out to reduce overcrowding or otherwise prevent, prepare for, and respond to COVID-19.
 - d. Acquisition of modular homes or RVs to meet an immediate need to provide housing for medical workers and other essential service providers and front-line staff.

2. **Public facilities and infrastructure.** Applicants may acquire, construct, rehabilitate, or install public works, facilities, and site or other improvements, when carried out expeditiously to prevent, prepare for, and respond to COVID-19. Examples include:
 - a. Construction of permanent or temporary facilities for testing, diagnosis, or treatment of COVID-19.
 - b. Rehabilitation of facilities to establish an infectious disease treatment clinic.
 - c. Acquisition, rehabilitation, or construction of a group living facility that may be used to centralize patients undergoing treatment.
 - d. Retrofitting of a food bank to ensure that employees and volunteers can safely work in the facility and distribute food.
 - e. Construction or conversion of structures that can serve as temporary emergency shelters in the facility and distribute food.
 - f. Paying for the operation and maintenance expenses of existing shelters and other public facilities (not including staffing costs) designed to ensure homeless persons are provided safe shelter and to minimize the risk of community spread.
 - g. Acquisition or conversion of a motel or hotel building or similar facility to expand capacity of hospitals to accommodate isolation of patients during recovery.
 - h. Expanding or repairing water lines to ensure that families have access to water to adhere to CDC guidelines and prevent the spread

- of COVID-19.
- i. Purchase of water tank trucks and other water distribution equipment and tools to expand medical and other emergency services.
 - j. Expanding cell towers and broadband infrastructure capacity needed to assist communities connecting internet and phone service to conduct business, allow students to participate in distance learning, support telehealth strategies, and provide other community services, provided such activities can be carried out expeditiously.
3. **Public services.** Applicants may provide new or quantifiable increased public services. ICDBG-CARES funds are not subject to the 15% cap on public services that normally applies to ICDBG grant funds. Examples include:
- a. Up to 6 months of emergency payments in the form of rental assistance, utility assistance (including internet access to allow children to engage in distance learning), food assistance, clothing, medical supplies, and other emergency assistance.
 - b. Placement of homeless persons in hotels and motels, and other non-congregate sheltering, to minimize infection.
 - c. Job training to expand the pool of health care workers and technicians that are available to treat disease within a community.
 - d. Providing security to ensure the health and safety of community members and to secure construction sites and community facilities from theft and vandalism.
 - e. Testing, diagnosis or other services at a fixed or mobile location.
 - f. Increasing the capacity and availability of targeted health services for infectious disease responses within existing health facilities.
 - g. Purchasing equipment, supplies, and materials necessary to carry out a public service.
 - h. Purchasing groceries for a food bank or distribution to vulnerable individuals.
 - i. Delivering meals to quarantined individuals or individuals that need to maintain social distancing due to medical vulnerabilities.
 - j. Acquisition or leasing of telehealth equipment or services to allow assisted residents access to health care providers from home.

g. Ineligible activities

The following activities are not eligible to be funded by ICDBG-CARES Act funding:

1. Paying for construction or maintenance of general governmental buildings.
2. Paying for political activities or general government expenses.
3. Using funds to reimburse other ICDBG grant funds that were reprogrammed to respond to the COVID-19 pandemic.

h. Application Submission, Review, and Approval

HUD will begin accepting applications on **June 1, 2020 at 3:00 p.m. EDT** on a first-come, first-serve basis. ***Applications submitted prior to this date and time will not be accepted and will need to be resubmitted.*** Applicants ***must*** submit their applications to ICDBG CARES@hud.gov. Applications sent to Area ONAP offices will not be accepted. As mentioned above, applications will be considered and awarded on a first-come, first-serve basis. Applications will be date stamped based on the time that they are received. If an application does not include all of the required submissions, it will be considered incomplete and will lose its position with respect to other completed applications that are submitted. If a required submission is included but is materially deficient, the application will be considered incomplete and will lose its position with respect to other completed applications that are submitted. An application is considered materially deficient if the information included the submission is so deficient that HUD determines, at its sole discretion, that the submission is effectively incomplete. HUD will consider an application materially deficient if the forms or submission components are included, but the submitted information does not address the eligible purposes or activities, or includes a timeline that is so excessive that it fails to address the immediate threat posed by COVID-19. If an application is considered incomplete, ONAP will notify the applicant as soon as possible and will advise the applicant on how to cure any deficiencies. Once cured of its deficiencies, the application may be resubmitted and will be date stamped at the time of receipt.

ONAP will review the complete applications and will then determine which to fund. ONAP may require additional information before funding the application. The applicant must respond to ONAP with this additional information within the timeframe that ONAP identifies. If the applicant does not respond within that timeframe, the application will be considered incomplete and will lose its position with respect to other completed applications that are submitted.

ONAP may provide less funding to an applicant than the full amount requested in the application. Additionally, ONAP may fund only certain activities, projects, or programs proposed in the application. If within the first month of accepting applications, HUD finds that the demand will likely far exceed the total available funding, HUD reserves the right to set aside the final \$20 million, or a lesser amount, to award to Indian tribes with the greatest need or urgency rather than on a first-come first-serve basis. If HUD exercises this option, HUD is not obligated to award any otherwise fundable applications that were previously received but were not funded because funding under the first round

of awards was depleted. However, HUD reserves the right to review such applications and determine whether they should be funded based on any new award criteria that HUD may set aside for the second round of awards. HUD may also award additional funding through the IHBG-CARES program if a sufficient amount of ICDBG-CARES funding remains unobligated after a period of time and projected program demand is low.

Mr. Atallah recommended that applicants check to make sure that they can open all required forms as soon as possible, and to make sure they address the citizen participation requirement sooner rather than later.

i. Grant Agreement and Award Letter

ONAP will send recipients an award letter and grant agreement package to sign and return. The grant agreement package will include the grant agreement and grant addendum. All documents are in electronic format. The grant agreement can be signed, scanned, and sent back to ONAP electronically. Recipients should maintain all documents with wet signatures in their records. Funds will be available in a Line of Credit Control System as soon as the fully executed grant agreements are returned by the applicant and processed by HUD.

j. Reporting

The following reporting requirements apply to the ICDBG-CARES grants. HUD may issue further guidance on reporting requirements in the near future:

1. Quarterly Federal Financial Reports (SF-425): these reports account for the receipt and disbursement of ICDBG-CARES funding.
2. Annual Status and Evaluation Report (ASER): ICDBG-CARES grantees will be required to submit this report annually to report on its progress in implementing the grant. An ASER will also be required after the ICDBG-CARES grant is fully expended.
3. Additional CARES Act reporting: section 15011 of the CARES Act requires that recipients of \$150,000 or more of CARES Act funding submit, not later than 10 days after the end of each calendar quarter, a detailed report outlining activities and expenditures.

k. General Resources

Mr. Atallah provided the following information as general resources to be consulted as you draft your application.

1. **HUD Guidance on Eligible Uses** for Community Development Block Grant

Funds to Support COVID-19 Responses: while the language in the guide specifically references CDBG, ICDBG has the same eligible activities, and therefore the guide can be considered applicable for both programs.

2. **ONAP COVID-19 Recovery Programs website:**
https://www.hud.gov/program_offices/public_indian_housing/ih/Covid_Recovery.
3. **ICDBG-CARES Waivers and Alternative Requirements, PIH Notice 2020-05:** <https://www.hud.gov/sites/dfiles/PIH/documents/PIH2020-05.pdf>.
4. **ONAP website, including updated COVID-19 related frequently asked questions:** <https://www.hud.gov/codetalk>.
5. **HUD COVID-19 resources and fact sheets:**
<https://www.hud.gov/coronavirus>.
6. **List of Indian Entities Recognized and Eligible to Receive Service from the United States Bureau of Indian Affairs** (85 FR 5462 published January 3, 2020: <https://www.federalregister.gov/d/2020-01707>).

II. Questions and Answers

After the general presentations, Mr. Atallah then addressed questions from callers about the Notice and ICDBG-CARES funding.

- Our community lacks the ability to communicate with members and wish to provide equipment that each home needs in order to connect. Can they provide computers and other communication equipment?
 - The tribe or TDHE should contact its local ONAP office to discuss this as it is a fact-dependent question.
- How do the income waivers work, particularly for those whose income changed overnight?
 - ICDBG-CARES funding, unlike IHBG CARES funding, can be used for both low income and over income families. However, the waivers dealing with utility assistance and rental support that extend such assistance up to 6 months are limited to low income families. Grantees can re-assess income at the present time, given that income has changed due to COVID-19.

- Do you have an update on FY19/FY20 ICDBG awards?
 - HUD has completed the award process and will make announcements soon. HUD is just waiting on deciding what to do with the un-awarded amounts.

- Grant caps established under \$750,000 are unfairly helpful to small tribes. Are there any waivers for the grant caps?
 - No, there are no waivers for the grant caps. HUD chose those caps to balance the needs of large tribes with significant COVID-19 needs and those of small tribes with needs that exceed grant caps.

- Can tribes register a home delivery for their local area that will help fishing and food businesses?
 - Distributing food to local community is eligible use and the tribe should work with its Area ONAP to figure out the parameters of the activity. However, if this is instead an economic development activity to help local fishermen, then HUD will consider it last. Economic development activities are fundable activities, but they will not be prioritized over housing, public services, etc. Mr. Atallah encouraged applicants to focus on housing and public services applications.

- What date should tribes list as the start project date for the implementation schedule?
 - Tribes should set it sometime after application date in their applications and propose the best time that they can in applying. HUD will work with the tribe to revise it if necessary.

- If the application is too large to send in one email, can tribes send multiple emails? Is there a page limit for the project narrative?
 - Tribes can send multiple emails to submit the application. If a tribe does that, HUD will count the tribe's first email as its time stamp, but tribes should send all emails ASAP after that first email is submitted.
 - There is no page limit for the narrative.

- Is the grant ceiling still the same even if a tribe has not received an IHBG grant?
 - It does not matter if a tribe actually received a grant, HUD will still use the IHBG allocation formula to determine what the ceiling will be.

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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.