



215 SW Washington Street, Suite 200
Portland, OR 97204

T 503.242.1745
F 503.242.1072

HOBBSSTRAUS.COM

MEMORANDUM

July 10, 2020

TO: TRIBAL HOUSING CLIENTS

FROM: HOBBS, STRAUS, DEAN & WALKER LLP

RE: ***HUD Releases Updated Notice Regarding CARES Act Waivers; House T-HUD Sub-Committee Releases Draft FY 2021 Appropriations Bill***

This memo reports on two recent developments relevant to Indian housing programs. The first is HUD's release of an updated PIH Notice on CARES Act waivers. The second is the release by the House Transportation-Housing and Urban Development ("T-HUD") subcommittee of an appropriations bill for FY 2021.

1. HUD Releases Updated Notice Regarding CARES Act Waivers

On Thursday, July 2nd, the Department of Housing and Urban Development ("HUD") released PIH Notice 2020-13, a Revision to PIH Notice 2020-05. Notice 2020-13 supersedes Notice 2020-05 (which was the initial HUD PIH Notice regarding waivers under the CARES Act). Accordingly, Notice 2020-13 is entitled, "COVID-19 Statutory and Regulatory Waivers and Alternative Requirements for the Public Housing, Housing Choice Voucher, Indian Housing Block Grant and Indian Community Development Block Grant programs, Suspension of Public Housing Assessment System and Section Eight Management Assessment Program, Revision 1." Notice 2020-13 is attached.

Notice 2020-13 restates the waivers and alternatives requirements established in Notice 2020-05, while issuing some technical amendments and extensions to those waivers and alternative requirements. Notice 2020-13 also provides additional waivers and alternative requirements for Native American Housing Programs.

A list of all amendments and extensions contained in Notice 2020-13 follows below. For complete details, please see the attached Notice 2020-13 and its Appendix.

a. IHBG CARES Funds Waivers

- HUD is extending the waiver requirement for submission of Indian Housing Plans ("IHPs") to include Program Years beginning on October 1, 2020. As the COVID-19

pandemic progresses, HUD will continue to reassess this and may grant further extensions if needed.

- IHPs for Program Years beginning on October 1, 2020, may be submitted by January 17, 2021.
 - The existing extensions in Notice 2020-05 for Program Years beginning April 1, 2020, and July 1, 2020, are unchanged.
 - HUD is further extending the deadlines for submitting Annual Performance Reviews (“APRs”):
 - IHBG recipients with Program Years ending December 31, 2019, may submit their APR for their Program Year on September 27, 2020;
 - IHBG recipients with Program Years ending March 31, 2020, may submit their APR for their Program Year on December 30, 2020; and
 - IHBG recipients with Program Years ending June 29, 2020, may submit their APR for their Program Year on December 30, 2020.
 - HUD has added an additional requirement for “us[ing] NAHASDA-assisted units, including FCAS, or funds for the temporary shelter-in-place or isolation of any individuals”:
 - No individual shall be isolated for longer than medically necessary.
 - To the extent necessary, HUD is waiving the requirement that undisbursed IHBG funds factor (“UDFF”) into the grant formula and “establishing an alternative requirement ... to exclude IHBG-CARES funds from counting towards an Indian tribe’s undisbursed IHBG funds from prior years under the UDFF.”
- b. ICDBG CARES Funds Waivers
- For ICDBG funding, HUD has now extended the waivers and alternative requirements that previously applied only to ICDBG-CARES and FY 2020 ICDBG funds to **FY 2019** ICDBG funds.
 - For Indian tribes to meet the alternative citizen participation requirement through publishing or posting information on their plans to use ICDBG grants, they must ensure that the publishing or posting effectively communicates the information *to persons with disabilities*.

- HUD is waiving the requirement for Indian tribes to submit a Request for Release of Funds and Certification for “grants to provide assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.”
 - The responsible entity, however, “must document in writing its determination that each activity or project is exempt from environmental review.”
 - Funds for reimbursing activities or projects that are not exempt from environmental review may only be committed after HUD approves a Request for Release of Funds.

- The removal of the 15 percent cap on “public services funding” shall also apply to FY 2019.

- To better facilitate emergency payments for low and moderate income individuals or families impacted by COVID-19, “ICDBG grantees may establish lines of credit with third party providers (e.g., grocery stores) on behalf of specific beneficiary families, provided all expenses can be properly documented and all ICDBG-CARES funds used for this purpose are expended on eligible activities.”
 - ICDBG grantees must ensure that proper documentation is maintained to ensure that all costs incurred are eligible.

- Equipment purchased using ICDBG funds to prevent, prepare for, and respond to COVID-19 “must be used for authorized program purposes, and any proceeds from the disposition of equipment will be considered ICDBG-CARES program income.”
 - HUD may issue further instructions regarding the disposition of program income after the grant closeout.

- HUD has issued a reminder that any “new housing construction must meet applicable federal accessibility requirements, including requirements under Section 504 of the Rehabilitation Act and 24 CFR part 8.”
 - HUD will issue additional ICDBG-CARES implementation guidance in the near future.

- HUD also published grant ceilings in PIH Notice 2020-11. Notice 2020-11 is attached.

- For Indian tribes receiving more than \$2 million in IHBG-CARES funding, the Grant Ceiling for ICDBG-CARES is \$3 million.
- For Indian tribes receiving more than \$750,000 but less than \$2 million in IHBG-CARES funding, the Grant Ceiling for ICDBG-CARES is \$1.5 million.
- For Indian tribes receiving less than \$750,000 in IHBG-CARES funding, the Grant Ceiling for ICDBG-CARES is \$900,000.

2. Appropriations Update

The House Appropriations Subcommittee on Transportation - Housing and Urban Development (T-HUD) has released their draft FY 2021 appropriations bill, which has been passed by voice vote without changes. The Subcommittee Republicans objected to the additional emergency spending, which we do not believe the Senate will accept. A full House Appropriations Committee markup has yet to be scheduled. We will have more details on the Subcommittee's recommendations for specific line items once the report to accompany the bill is released by the House Appropriations Committee. We provide some highlights from the draft bill below:

a. Topline FY 2021 Recommendations:

- \$2.5 million for HUD/VA Supportive Housing for Homeless Native American Veterans, an increase of \$1.5 million above FY 2020 Enacted. (The President's budget request proposed eliminating this program);
- \$835 million for Native American Programs, an increase of \$10 million above FY 2020 Enacted and \$235 million above the President's budget request, of which:
 - \$646 million for the Native American Housing Block Grants program;
 - \$2 million shall be for the cost of guaranteed notes and other obligations, as authorized under Title VI of NAHASDA. (The Secretary may subsidize the total principal amount of any notes and other obligations, any part of which is to be guaranteed, not to exceed \$61,298,904)
 - \$110 million for competitive grants under the Native American Housing Block Grants program;
 - \$70 million for grants to Indian tribes for carrying out the Indian Community Development Block Grant program;
 - \$7 million for providing training and technical assistance to Indian tribes, Indian housing authorities, and tribally designated housing entities, of which:
 - Not less than \$2 million for a national organization as authorized under section 703 of NAHASDA (25 U.S.C. 4212);

- \$1.1 million for the Indian Housing Loan Guarantee Fund Program Account, equal to FY 2020 Enacted. (The Secretary may subsidize total loan principal, any part of which is to be guaranteed, up to \$1 billion);
- \$500,000 for administrative contract expenses, including management processes to carry out the Indian Housing Loan Guarantee Program, equal to FY 2020 Enacted; and
- \$4 million for the Native Hawaiian Housing Block Grant, an increase of \$2 million above FY 2020 Enacted. (The President's budget request proposed eliminating this program.)

b. Additional Emergency Infrastructure Investments.

In addition to the recommended funding levels for the regular FY 2021 appropriations process, the bill would provide the following supplemental emergency funding:

- \$1 billion for Native American Programs, (to remain available until September 30, 2022, unless otherwise specified) of which:
 - (1) \$400 million for the Native American Housing Block Grants program;
 - To be distributed according to the same funding formula used in FY 2021;
 - To be used for new construction, acquisition, rehabilitation, and infrastructure development;
 - In selecting projects to be funded, grantees shall give priority to projects for which contracts can be awarded within 180 days from the date that amounts are made available to the grantees;
 - The Secretary shall notify grantees of their formula allocation not later than 60 days after the date of enactment of this Act; and the Secretary shall obligate amounts allocated by formula not later than 120 days after the date of enactment of this Act;
 - (2) \$350,000,000 for competitive grants under the Native American Housing Block Grants program;
 - The Secretary shall obligate this additional amount for competitive grants to eligible recipients authorized under NAHASDA that apply for funding;
 - In awarding this additional amount, the Secretary shall consider need and administrative capacity and shall give priority to projects that will spur construction and rehabilitation;
 - Grants shall be not less than \$500,000 and not greater than \$20 million;
 - Recipients shall obligate 100 percent of such amounts within 1 year of the date amounts are made available to a recipient, expend at least 50 percent of such amounts within 2 years of the date on which amounts become available to such recipients for obligation, and expend 100 percent of such amounts within 3 years of such date;

- The Secretary shall issue a Notice of Funding Availability not later than 60 days after the date of enactment of this Act and require application submissions 90 days after the publishing of such notice, and of the applications submitted the Secretary shall make grants not later than 270 days after the date of enactment of this Act;
- (3) \$250 million for grants to Indian tribes for carrying out the Indian Community Development Block Grant program;
 - Not to exceed 20 percent of any grant shall be expended for planning and management development and administration;
 - The Secretary shall issue a Notice of Funding Availability not later than 180 days after the date of enactment of this Act, such Notice of Funding Availability shall require application submissions 90 days after the publishing of such Notice, and the Secretary shall make grants not later than 390 days after the date of enactment of this Act;
- The Secretary may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the use of amounts made available under this heading in this title (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding by the Secretary that any such waivers or alternative requirements are necessary to expedite or facilitate the use of such amounts;
- Not less than 10 percent of the amounts made available under this heading in this title shall be used for activities that improve water and energy efficiency, or reduce the risk of harm to occupants or property from natural hazards;
- Up to 1 percent of the amounts made available in paragraphs (2) and (3) under this heading in this title may for administering and overseeing the obligation and expenditure of these funds, to remain available until September 30, 2023;
- \$20 million for the Native Hawaiian Housing Block Grant, available until September 30, 2022, and subject to the provisions for the regular FY 2021 appropriations for this program, except as modified below:
 - Not less than 10 percent of the amounts made available under this heading in this title shall be used for activities that improve water and energy efficiency, or reduce the risk of harm to occupants or property from natural hazards; and
 - Up to 1 percent of the amounts made available under this heading in this title may for administering and overseeing the obligation and expenditure of these funds, to remain available until September 30, 2023.

c. Outlook

The Senate Appropriations Subcommittees were positioned to markup their

FY 2021 appropriations bills last week but have been delayed because of disagreements between Senate Republicans and Democrats over what kinds of things can be included in their FY 2021 appropriations bills.

Because of partisan differences and a limited number of work days before the beginning of the new fiscal year on October 1, 2020, many are predicting that Congress will need to pass at least one continuing resolution (which would continue FY 2020 terms and spending levels for a set period of time) to get through the beginning of the new fiscal year and may ultimately need to pass additional continuing resolutions through the end of the calendar year, depending on the outcome of the elections in November.

We will continue to monitor and report on these developments.

Conclusion

If you have any questions or would like assistance, please contact Ed Clay Goodman at egoodman@hobbsstrauss.com or by phone at 503-242-1745.