



MEMORANDUM

April 14, 2021

To: TRIBAL HOUSING CLIENTS

From: Ed Clay Goodman
HOBBS, STRAUS, DEAN & WALKER, LLP

Re: ***NWIHA/NWONAP Call re American Rescue Plan and Other Housing Updates***

Various U.S. Department of Housing and Urban Development (“HUD”) regional Offices of Native American Programs (“ONAP”) have been hosting virtual webinars on recent developments for Indian housing, and specifically on the American Rescue Plan Act of 2021 (“ARP”), Indian Housing Block Grant (“IHBG”) and Indian Community Development Block Grant (“ICDBG”) funding details, the foreclosure moratorium extension, and other housing matters. On April 13, 2021, the Northwest Office of Native American Programs (“NwONAP”) held such a call, and we report on it here because it contains items of general applicability to tribal housing programs across the country. The call has been recorded and will be uploaded to the NwONAP website, located [here](#).

I. American Rescue Plan (ARP)

On March 11, 2021, the President signed the ARP (H.R. 1319) in response to the health and economic effects of COVID-19. The ARP is targeted towards economic recovery, in addition to providing assistance during the pandemic. The ARP provides \$750 million in funding, to remain available until September 30, 2025, for programs funded under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), allocated as follows:

- \$450 million for the IHBG Program (“IHBG-ARP”)
- \$280 million for the (noncompetitive) ICDBG Program (“ICDBG-ARP”)
- \$5 million for the Native Hawaiian Housing Block Grant program (“NHHBG-ARP”)
- \$10 million for related technical training and assistance (“TA”)
- \$5 million for Administration.

A second ARP provision providing funding for Indian housing programs is a \$500 million set aside for a Homeowner Assistance Program (“HAP”)(out of approximately \$9.9 billion nationwide). The HAP funding can be used for the following services:

- Mortgage payment assistance
- Financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing related costs related to a period of forbearance, delinquency, or default
- Principal reduction
- Facilitating interest rate reductions
- Payment assistance for utilities, internet, homeowner’s insurance, flood insurance, mortgage insurance, homeowner’s association fees, condominium association fees or common charges

a. ARP Reporting

Mr. Carney commented that HUD is still waiting to receive information on what the reporting requirements will be for ARP funding. However, he expects that ARP reporting for ONAP purposes will be similar to the standard annual reporting, with potentially one quarterly reporting required for the Federal Financial Report (Standard Form 425).

b. IHBG-ARP (\$450 million)

The allocations for the IHBG-ARP funding will be based on the 2021 IHBG formula. Tribes and TDHEs will likely be allocated approximately 69 percent (69%) of their 2021 IHBG funds. The purpose of the IHBG-ARP is still to prevent, prepare for, and respond to COVID-19, including maintaining normal operations that are impacted by COVID-19. Mr. Carney commented that ONAP will be publishing an implementation notice, likely this week, which will include information on the required submittals (Abbreviated Indian Housing Plan (“AIHP”)) and eligible activities. Mr. Carney noted that the AIHP for the IHBG-ARP will look substantially similar to the AIHP for the funding provided under the 2020 Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) for the IHBG program (“IHBG-CARES”). HUD will issue the grant award documents for the IHBG-ARP after the AIHPs are approved.

Mr. Carney noted that Tribes and TDHEs can use IHBG-ARP funds for direct costs related to preventing, preparing for, and responding to COVID-19. This includes:

- Everything eligible for funding under IHBG-CARES
- Maintaining normal operations
- Housing construction to alleviate overcrowding

- Housing acquisition (existing homes, modular homes, tiny homes, etc.)
- Subrecipient arrangements with third party providers are allowable; Tribes and TDHEs can use the funds to work with other Tribes or nonprofits
- Costs to upgrade equipment or technology to facilitate electronic communications and reduce reliance on in-person meetings and transactions
- Emergency assistance to families at risk of homelessness
- Housing services to assist and educate residents on prevention of COVID-19
- Supporting access to COVID-19 vaccinations

IHBG-ARP funds cannot be used for costs that are already funded by other sources (no duplication of benefits) or to reimburse IHBG expenditures.

Mr. Carney encouraged Tribes and TDHEs to prepare for the IHBG-ARP additional funding by identifying any housing needs and priorities for both the present and future. Tribes and TDHEs should also plan for their internal review and approval processes so that those processes do not hold up use of the funding.

One participant asked whether there will be environmental waivers for IHBG-ARP funding. Mr. Carney responded that the same waivers in place for IHBG-CARES funding will be in place for IHBG-ARP funding.

c. ICDBG ARP (\$280 million)

Mr. Carney noted that the amount of funding for the ICDBG-ARP will be more than three times the funding that was available for ICDBG programs under the CARES Act (“ICDBG-CARES”). As with the IHBG-ARP funding, the purpose of the ICDBG-ARP is to prevent, prepare for, and respond to COVID-19. HUD will be issuing an implementation notice in the coming weeks, which will include details on the award criteria, application priorities, and grant ceilings. Similar to the ICDBG-CARES funding, HUD will place an emphasis on the rapid completion of the identified activities, which will be further detailed in the implementation notice. For the ICDBG-CARES funding, tribes and TDHEs had a twelve-month window for completion of projects funded by ICDBG-CARES. Tribes and TDHEs that expended funds beyond that window were required to provide an explanation. Mr. Carney expects that ICDBG-ARP funding will have a similar timeframe for expenditure of funds.

Mr. Carney remarked that in awarding funding, HUD may prioritize those ICDBG-CARES applications that were submitted but not funded due to lack of funding. HUD will focus on awarding these grants as quickly as possible to meet the urgent needs of tribes and TDHEs.

d. ARP Technical Assistance (\$10 million)

Mr. Carney noted HUD ONAP has not received many details on the technical assistance that will be funded under ARP. He noted that the TA funding will likely be able to be used for various types of training related to ARP but he is not yet aware of how much flexibility there will be in the TA funding. HUD will release further information on the TA funding under the ARP as soon as it can.

One participant asked whether the Northwest Indian Housing Association (NWIHA) would be able to provide TA training through a partnership with a NWIHA member Tribe, with the Tribe providing the funding. ONAP staff responded that such a collaboration should be allowable, as long as it is tied to the ARP funding requirements.

e. ARP guidelines

Mr. Carney commented that IHBG-ARP and ICDBG-ARP funding will have the same flexibilities as both IHBG and ICDBG funding. As with the CARES Act, the ARP provides HUD with authority to consider waivers and alternative requirements based on the needs of tribes. Mr. Carney encouraged tribes and TDHEs to reach out to their respective ONAP office with any concerns or problems regarding the use of ARP funding or implementation of the projects. ONAP will do what they can to apply a waiver for tribes and TDHEs. As noted earlier, the unique reporting requirements for ARP are still being addressed. Despite any misgivings tribes or TDHEs have about reporting requirements, Mr. Carney encouraged all tribes and TDHEs to accept IHBG-ARP and/or ICDBG-ARP funding and use it for their communities. He noted that ONAP will help the tribes and TDHEs solve any issues that arise.

II. Other Housing Matters

a. IHBG and ICDBG funding details

Mr. Carney also provided an update on the IHBG-CARES and ICDBG-CARES funding. He noted that the northwest has expended about 50 percent (50%) of the IHBG-CARES funding. HUD ONAP will continue to expend and draw funding until the IHBG-CARES funding is depleted. Mr. Carney emphasized that if any tribe or TDHE that needs to change the direction of their use of the funding should reach out to their regional ONAP office to help them do so. ONAP staff will help tribes and TDHEs amend their AIHPs in order to expand or change the scope of the project. There is no set deadline for expenditures of IHBG-CARES funding. However, Mr. Carney remarked that an efficient use of IHBG-CARES funding will help tribes in receiving additional funding in future years. Mr. Carney therefore encouraged tribes and TDHEs to expend funding as efficiently and expeditiously as possible.

With regards to the ICDBG-CARES funding, there are eleven grants in the northwest, with about 33 percent (33%) of the funding expended. Mr. Carney noted that AIHPs can be amended (*see* PIH Notice 2021-06), but because the funding is a little more restricted than IHBG-CARES funding, there is less flexibility in how they can be amended. Mr. Carney encouraged all Tribes and TDHEs to contact their respective ONAP office if they would like to amend their AIHPs.

b. Section 184 Foreclosure moratorium extension

On February 19, 2021, HUD published a *Dear Lender Letter*, informing lenders of the expansion of special loss mitigation options available to Section 184 Indian Home Loan Guarantee program (“Section 184”) and Section 184A Native Hawaiian Housing Loan Guarantee program (“Section 184A”) borrowers under Section 4022 of the CARES Act. The *Dear Lender Letter* also extends the foreclosure moratorium initially provided under the CARES Act until June 30, 2021 and extends loan processing flexibilities related to appraisals, verification of employment, and IRS transcripts. The moratorium provides foreclosure forbearance relief for borrowers if the financial hardship is due to COVID-19. Mr. Carney noted that because of the Section 184 backlog in the ONAP headquarters, area ONAPs will be assisting in processing Section 184 and Section 184A loans and forbearances. The full *Dear Lender Letter* is available [here](#).

c. Training and TA availability

NwONAP will be hosting the upcoming virtual trainings:

**Save the Date
Upcoming Virtual Trainings**

April 14-15 Methamphetamine/Remediation of Units	May 19-20 NAHASDA Intermediate
April 21-22 Procurement & Contract Administration	June 8-10 Environmental Review
April 27-29 Sustainable Development, Design & Construction	July 21-22 Conveyance Process
May 12-13 Self Monitoring	September 1-2 Self-Monitoring

Technical assistance is still available. Additional information on training and technical assistance can be found on the HUD Codetalk website, found [here](#). Mr. Carney encouraged tribes and TDHEs to contact their grants management specialist or Kirsten Franklin-Temple, NwONAP Administrator Advisor, for more information on training and technical assistance.

d. HUD and ONAP staffing updates

Mr. Carney provided a quick update on NwONAP. He commented that NwONAP staff are still working from home and will be for the foreseeable future. NwONAP staff request that tribes and TDHEs correspond with NwONAP by email. Mr. Carney encouraged tribes and TDHEs to reach out to him directly at (206) 220-6204 if they run into issues, and to leave a message if Mr. Carney does not pick up. Mr. Carney also provided updates on HUD administrative staff changes. Marsha Fudge is the new HUD Secretary, and Gary Cooper is the new ONAP Director of Field Operations.

Mr. Carney commented that more information on the ARP and other housing matters can be found on the Codetalk website, located at this link:

https://www.hud.gov/program_offices/public_indian_housing/ih/ONAP-ARP_Act_2021

e. Questions and Comments from participants

Mr. Carney then opened up the call to questions and comments from participants.

Ms. Cloud commented that her tribe is considering adding rooms to existing housing that are overcrowded on an existing basis, to provide more room for families to safely remain at home while remaining separate from those with COVID-19. Ms. Cloud asked other participants that have any experience with expanding homes for this reason to reach out to NWIHA with comments.

One participant commented that her tribe used IHBG-CARES funding to upgrade accounting software and to build a duplex. For the duplex, they selected alternate contractors so that they can obtain contractors as inexpensively as possible. She recommended carefully analyzing the scope and cost of projects to make sure that they are in line with each other. She noted doing so allowed her tribe to track where a bidder might be the lowest bidder overall, but may have certain items that are more expensive. By doing a line-item comparison, she was able to contract out these more expensive items to other alternate contractors willing to price them lower. The participant also commented that she involves the maintenance manager in the construction process to give advice on which appliances are the best for the tribe long-term. Her Tribe has also tweaked the basic plans from elder homes to fit rental homes, thereby saving themselves the hassle and cost of developing rental home plans from scratch.

Mr. Carney asked whether the tribe has developed a tribal workforce with IHBG funding, in order to help employ tribal members while assisting with tribal housing.

A participant noted that her tribe has used ICDBG-CARES to employ tribal members for construction, but mainly it has been difficult to obtain new housing staff due to COVID-19.

Another participant asked whether HUD will be working with IHBG and ICDBG funding to address the rise in building costs. The participant noted that they are now facing costs for building resources three to four times more expensive than they were last summer. Mr. Carney commented that he has heard from multiple Tribes that they are facing substantially increased costs. In working with prior funding, he noted that it is not feasible to adjust the grant amounts to cover the increased building costs. However, it may be possible to help cover the increased building costs by making adjustments to the scope of activities for a project. For example, he noted that if a tribe had planned on building ten four-bedroom houses, the tribe could amend the scope of the project to instead build ten three-bedroom houses in order to cover the increased building costs. Mr. Carney recommended reaching out to NwONAP to amend the scope of projects if needed.

Another participant commented that the Emergency Rental Assistance Program (“ERAP”) requires that 65 percent (65%) of the funding must be expended by September 30, 2021. The participant asked whether the ARP requires the ARP funding to be expended by that deadline as well. Mr. Carney responded that IHBG-ARP funds do not have that same expenditure requirement but encouraged tribes and TDHEs to spend ARP funding as expeditiously as possible.

An additional participant asked whether the U.S. Department of Treasury (“Treasury”) will extend the 65 percent (65%) expenditure deadline. Mr. Carney commented that because it is a Treasury program, he is not aware of whether Treasury will extend that deadline. We note that the deadline for expenditure is statutory and that only Congress (not Treasury) can extend it.

f. Other Matters

Mr. Anderson commented that the next NWIHA meeting will be held virtually May 18–19, 2021. NWIHA members interested in attending must register through the NWIHA website.

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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.