



MEMORANDUM

April 16, 2021

To: TRIBAL HOUSING CLIENTS

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

Re: *COVID-19 Housing Updates*

This week has seen a number of developments in COVID-19-related housing matters. This memo reports on the following: (1) Department of Treasury (“Treasury”) releasing guidance on the Homeowner Assistance Fund (“HAF”) Program; (2) Tribal Consultation with Treasury on HAF; and (3) Department of Housing and Urban Development (“HUD”) releasing guidance on the IHBG-ARPA funding.

I. Treasury Issues Guidance on Housing Assistance Fund Program

On April 14, 2021, Treasury released its initial guidance (“Treasury Guidance”) on HAF. That Guidance is attached to that memo, and is also available at this link: <https://home.treasury.gov/system/files/136/HAF-Guidance.pdf>.

The HAF Program was established under the American Rescue Plan Act, H.R. 1319 (“ARPA”), signed into law on March 11, 2021. ARPA was enacted in response to the health and economic effects of COVID-19. The ARPA is targeted towards economic recovery, in addition to providing assistance during the pandemic. HAF was established under Section 3206 of ARPA. Under the HAF Program, Treasury will provide financial assistance in an aggregate amount of approximately \$9.9 billion, with a 5 percent (5%) tribal set-aside (approximately \$498 million). Treasury is required to allocate these funds according to the same proportions as used in the Emergency Rental Assistance Program (“ERAP”). Treasury will release the specific allocation figures after the Tribal Consultation.

Tribes or TDHEs who want to receive this funding must submit a Notice of Request for HAF funding. A copy of that form is attached, and is available at the following link: <https://home.treasury.gov/system/files/136/HAF-Notice-of-Funds-Request.pdf>. The deadline for tribes or TDHEs to submit that Notice is September 30, 2021. Treasury will also require that the tribe or TDHE, as a condition of receiving the funds, sign a Financial Assistance Agreement: https://home.treasury.gov/system/files/136/HAF-Financial-Assist-Agmt_0.pdf. Treasury will make initial payments to tribes or TDHEs in the amount of 10 percent (10%) of the allocated HAF funds. In order to receive the remaining 90 percent (90%) of HAF funds, the tribe or TDHE must submit a plan for its use of the HAF funds. Treasury will publish a HAF plan

template in the near future. The Treasury Guidance provides flexibility to tribes to tailor their HAF plans to their tribal communities. Additionally, tribes and TDHEs that receive less than \$5 million in HAF funds will have reduced planning requirements. Further details will be forthcoming in future Treasury guidance.

The Treasury Guidance provides that homeowners are eligible to receive assistance under HAF if they experienced hardship after January 21, 2020 and have incomes equal to or less than 150 percent (150%) of the area median income. The Treasury Guidance further states that at least 60 percent (60%) of the HAF funds received by a participant must be used to assist homeowners with “incomes equal to or less than 100 percent (100%) of the area median income or equal to or less than 100 percent (100%) of the median income for the United States, whichever is greater.” The remaining amount of HAF funds must be prioritized to assist “socially disadvantaged individuals,” which the Treasury Guidance defines as including Native Americans.

The Treasury Guidance provides a list of expenses that qualify for HAF funding, including:

1. Mortgage payment assistance;
2. Assistance to allow a homeowner to reinstate a mortgage;
3. Mortgage principal and interest rate reduction;
4. Payment assistance for:
 - a. homeowners utilities, internet service, insurance, and association fees;
 - b. down payment assistance loans;
 - c. delinquent property taxes; and
 - d. measures to prevent homeowner displacement, such as home repairs; and
5. Planning, community engagement, needs assessment, and administrative expenses related to the HAF funds in an amount not to exceed 15 percent (15%) of the HAF funding received by the HAF participant.

Please see the Treasury Guidance attached to this memo for a full list of qualified expenses.

II. Tribal Consultation with Treasury on Housing Assistance Fund Program

Treasury convened a Tribal consultation on the HAF Program on Thursday, April 15, 2021. Below is a summary of the call and the feedback received from Tribal leaders.

a. Opening Presentation

Nancy Montoya, Treasury Point of Contact for Tribal Consultation, gave brief opening remarks. Also participating on the call was Noel Poyo, Treasury Deputy Assistant Secretary for Community and Economic Development, and Vikram Viswanathan, Senior Advisor, Domestic Finance.

Ms. Montoya noted that Treasury welcomes written comments from tribal leaders on the HAF Program. The deadline for submission of written comments is 11:59 P.M. ET on Friday, April 16, 2021.

Ms. Montoya also commented that Treasury will be hosting a Tribal Consultation on the Anti-Money Laundering Act of 2020 Corporate Transparency Act (“CTA”), from 2:00 P.M. to 4:00 P.M. ET on Wednesday, April 21, 2021, and another Tribal Consultation and Listening Session on the Treasury Tribal Advisory Committee’s Dual Taxation Report from 2:00 P.M. to 5:00 P.M. ET on April 30, 2021. Information on both consultations can be found on the Treasury website located [here](#).

Ms. Montoya noted that the State Small Business Credit Initiative (“SSBCI”), funded through the ARPA, will fund state, territory, and tribal government small business support and investment programs. Tribes must submit a notice of intent to apply by June 11, 2021 and applications are due December 11, 2021. Treasury will release both the notice of intent and application forms in the coming weeks.

Mr. Poyo then provided a brief overview of the HAF Program. He commented that the Treasury Guidance released on April 14, 2021, was intended primarily to provide states with enough information to apply by the state deadline. Treasury will be releasing additional guidance specific to tribes in the coming weeks, which will include further information on the flexibility that tribes and TDHEs will have under the HAF Program.

Mr. Poyo then opened the call up to questions and comments.

b. Comments from Participants

Below are comments and questions raised by participants, along with the responses by Treasury staff to some of the comments or questions (Treasury did not provide a response to each comment; where they did respond we have provided that response below the comment or question).

- **Delegate on behalf of the Navajo Nation:** The Navajo Nation is the largest land-based reservation. The Navajo Nation has over 400,000 members, half of whom reside on the reservation. It is one of the tribal nations that has been hit the hardest by the COVID-19 pandemic and the housing situation has become desperate. Navajo members need access to housing in order to quarantine and recover from COVID-19. The Navajo Nation has had to place tribal members in tents and hotels in order to protect against COVID-19. The Nation currently estimates that it has 30,000 families in need of housing due to overcrowding and foreclosures resulting from the pandemic. Regarding the HAF reporting requirements, it would serve tribes best if there was a limit on what is required. While there is a need to collect data, extensive reporting requirements are burdensome, costly, and prevent tribes and TDHEs from devoting time and energy to providing housing to their people. Technical assistance is welcome, but the delegate recommended that the majority of the HAF funds be devoted to assisting homeownership. She noted that providing homes for victims of domestic violence is important as well.

- **Mr. Poyo** remarked that Treasury appreciates the comments on the reporting requirements and will issue further guidance on those requirements. He noted that there will be significant differences in the reporting requirements for tribes, and Treasury is very interested in receiving specific feedback on reporting requirements from tribes.
- **Chairwoman Andrews-Maltais, the Wampanoag Tribe of Gay Head Aquinnah:** It would be best if Treasury receives tribal member input before it releases any guidance. ERAP disadvantaged many tribes because of the allocation formulas. Chairwoman Andrews-Maltais recommended that 50 percent (50%) of the tribe set aside be distributed equally across all tribes, 25 percent (25%) be based on population, and 25 percent (25%) be based on land size. Treasury should employ maximum flexibility for tribes, as there are great differences in the resources available to tribes and in the way that tribes have been treated by the federal government over the centuries. Basing the income levels on the area median income is unfair. The Wampanoag Tribe lives in an area with one of the most expensive costs of living in the United States. What one tribe considers to be low income is very different from what other tribes would consider to be low income. There must therefore be flexibility for tribes in determining what the median income requirements are for homeowner eligibility for the HAF Program. Chairwoman Andrews-Maltais emphasized that it is important that Treasury engage in tribal consultation *prior* to issuing guidance and making decisions, not afterward. She appreciates what Treasury is doing regarding the HAF consultation.
 - **Mr. Poyo** commented that he appreciates the comments on determination of income and will make sure that Treasury addresses that.
- **President Lee Wallace, Organized Village of Saxman, Saxman I.R.A. Council:** He thanked Treasury for having the consultation. President Wallace commented that it is important that tribes, particularly small tribes, have flexibility in implementing the HAF funds. The Organized Village of Saxman relies heavily on tourism and so many tribal members are without work due to COVID-19. The tribe must have flexibility to assist its people during this time.
- **Head Councilman Joe Garcia, Ohkay Owingeh:** There must be better coordination between federal agencies regarding consultation schedules so that they are not scheduled on top of each other. Tribal leaders are having to juggle attending many consultations in a short time period. Regarding housing, many tribal members are facing hardships because of COVID-19, the loss of their jobs, and business closures. Many people are therefore having a difficult time making payments, which in turn makes it harder to obtain homeownership. For homeownership, obtaining income for financing a home is a challenge. Housing should not be this big of an issue. The limits on housing and housing shortages makes it difficult for tribal members to start the process of owning a home. Head Councilman Garcia hopes that Treasury comes up with a good plan as to what assistance will be allowed under HAF.

- **Chairperson Aaron Payment, Sault Ste. Marie Tribe of Chippewa Indians:** While tribes are inundated with consultations, Chairperson Payment appreciates this one. One big issue is the funding distribution policy. The need for funding far outstrips the available resources. At some level there is a need to triage the most critical issues when allocating expenditures. One priority should be for those who have entered into mortgages but have trouble making payments because of COVID-19. Chairperson Payment supports the concept of allowing for re-mortgages whenever possible, including covering any associated fees. The way that many tribes implement the homeowner programs narrows the applicability of HAF. Individuals must be poor enough to need help but not so poor that they cannot afford a mortgage. It is therefore important to think about a broader applicability for a mortgage program for people who have income below the required income criteria but who could participate in a mortgage program if they had help getting there. The Consumer Financial Protection Bureau (“CFPB”) has a program called “Your Money, Your Goals” that provides resources and curriculum to organizations to help them provide financial assistance to the people they serve. Chairperson Payment noted that including curriculum such as the Your Money, Your Goals in any homeownership program is a critical aspect of helping increase the number of people able to enter into mortgages. Regarding median income, area median income would not be useful to use. It would be best if the HAF Program started with the national median income but then allowed tribes to use the area median income if that is what is best for them. Under tribal self-determination, Treasury should allow tribes to use the income that is best for their communities. With regards to financing, funding that states receive from HUD is usually based on criteria that is inequitable for tribes, such as the criteria for low-income financing. Rural communities such as tribes are at a disadvantage and are often disqualified by financing agencies because of the bias against rural communities and reservations. This should be considered for the HAF Program structure. It is also important that there be flexibility in the tribal reporting requirements.
 - **Mr. Viswanathan** remarked that the CFPB curriculum comment is appreciated. **Mr. Poyo** commented that he is looking forward to written comments, as detailed information on some of the issues that Chairperson Payment raised will be very useful to Treasury.
- **CFO Sorhna Li, Scotts Valley Band of Pomo Indians:** The Scotts Valley Band of Pomo Indians does not have any land held in trust and its members live in a variety of counties, with varying income levels. CFO Li would therefore prefer that tribes be allowed the flexibility to choose the highest median income for all counties for homeowner eligibility. It would be best to tailor the reporting requirements to be as close to the ERAP requirements as possible. Tribes often have limited staff, so the reporting requirements and corresponding deadlines for the many housing programs become overly burdensome. It is best that the reporting requirements be streamlined and consistent to minimize that burden. CFO Li noted that some tribes may have more renters in need of assistance than homeowners, or vice versa. It would be useful if tribes could take unused money from the ERAP and redirect it through the HAF, or vice versa. However, she understands that statutory limitations may prohibit this. In terms of documentation requirements, tribes need as much flexibility as possible for requiring documentation

from eligible homeowners. Tribes should be able to make the determination. Regarding technical assistance, it is always appreciated. However, it is best that webinars be provided to address any significant changes to newly released FAQs. It would also be useful to receive emails back from Treasury in a timely fashion.

- **Executive Director Floyd Tortalita, Pueblo of Acoma Housing Authority:** It is important that tribes be able to provide assistance for mortgage payments, past due mortgage payments, property taxes, homeowners insurance, homeowners association fees, internet services, and financial services, among others. All of these are costs associated with being homeowners. Regarding the reporting requirements, they should be similar to those for ERAP. In terms of qualified expenses, Executive Director Tortalita recommended that tribes be allowed to use 20 percent (20%) of the HAF funds for administrative costs. Many smaller tribes have limited staff and must contract out for program administration. Additionally, many tribes will need to develop the HAF program from scratch, which drives up the costs for staff and office space. Regarding income, it is best that HAF allow for assistance for homeowners with up to 100 percent (100%) of the median income because of the increased risk of foreclosure due to COVID-19. Tribes should be able to use the higher of either the area median income or the national median income, whichever is more beneficial to the tribal community. Regarding HAF timelines, Executive Director Tortalita recommended that the timeline for expenditure of funds be three years, as it takes time for a tribe to put together a new program and policy. A requirement that funds be expended within a year timeframe causes tribes to have to be hasty in putting together programs, which increases the risk of errors. With regards to qualified expenses, private mortgage insurance should be a qualified expense under HAF as it is part of the cost of being a homeowner.
 - **Mr. Poyo** commented that the Treasury Guidance addresses some of the points Executive Director Tortalita raised, including the fact that households at 100 percent (100%) of the area median income are eligible for HAF assistance. The point regarding allowing for increased administrative costs is well received. The Treasury Guidance currently allows 15 percent (15%) of the HAF funds received by a tribe or TDHE to be used for administrative costs, but Treasury will consider increasing it.
- **Executive Director Neil Whitegull, Ho-Chunk Housing and Community Development Agency:** Treasury should be mindful that many tribes have diverse housing programs that do not match those that exist in the rest of the country, due in part to the housing being located on tribal trust land and reservations. Regarding reporting requirements, the reporting will be burdensome for small tribes, so it is best to keep the requirements to be as minimal as possible. It would also be useful to provide training and technical assistance to help small tribes with the requirements. In creating the HAF requirements for tribes, it would be very beneficial to allow tribes to use their existing programs instead of requiring them to develop new HAF-specific programs. Regarding performance goals, because tribes are already disadvantaged, it would be best to expand and allow further flexibility on what the performance goals look like. The language in the Treasury Guidance allowing for use of the higher of the national or area median

income is appreciated. Executive Director Whitegull also commented that he appreciates Mr. Poyo's perspective on how to get the funding to tribes and that the main point of the funding is to help as many tribal members as possible.

- **Mr. Poyo** responded that he appreciates the comment regarding the diversity of tribal programs and will make sure that any definitions in future guidance do not limit existing tribal programs. Treasury welcomes comments providing more information on the existing tribal programs, which will allow Treasury to make sure that HAF does not exclude any type of tribal homeownership program.
- **Executive Director Bobby Yandell, Housing Authority of the Choctaw Nation of Oklahoma:** He commented that he supports increased flexibility for tribes regarding the use of either area or national median income. Is it okay for tribes to implement the HAF Program for tribal members nationwide, or only those who live on the tribe's reservations? As tribes and TDHEs make payments under HAF, will they make the payments to homeowners or directly to utility and mortgage providers? On page 5 of the Treasury Guidance, regarding the targeting requirement that at least 60 percent (60%) of the funding be used for homeowners with incomes less than or equal to 100 percent (100%) of the median income, how does that correlate to the requirement that the rest of the funding be prioritized to go to socially disadvantaged individuals? By definition, all tribal members are disadvantaged. Finally, at what point will tribes receive the funds from Treasury?
 - **Mr. Poyo** commented that he is very interested in receiving further feedback on whether tribes should be able to serve tribal members only on reservations or also those living off reservation. Tribes can make the decision about whether to pay homeowners or directly pay utility and mortgage providers. That will depend on the tribes' program design and what makes the most sense for both the tribes and the particular circumstances. The targeting requirements mostly apply to states. Treasury will issue more guidance on how those requirements might apply to tribes. Regarding the funding timing, Treasury will make initial payments of 10 percent (10%) of the allocated amounts to tribes as soon as it receives the Notice of Request and Financial Assistance Agreement. Treasury wants to work with tribes so that if they need money for an urgent need, Treasury will be responsive. Treasury wants to ensure that the programs are set up properly but will balance that with working with tribes to turn the funding around as quickly as possible.
- **Director of Admin. Oper. Ramon Bear Runner, Oglala Sioux Lakota Housing:** He appreciates the opportunity to speak on behalf of the Tribe. One issue for the Oglala Sioux Lakota is that the state has no jurisdiction on the reservation. The tribal laws are different than those of the state and the relationship with the state is usually not very good. The Tribe is in a constant battle with the state over jurisdiction. This causes problems with housing. The Chief Executive Officer of the Housing Authority commented that this is the first time that Treasury is consulting with tribes and it is appreciated. Treasury will be dealing with many different tribes, with many different histories and different relationships with the federal government. The Oglala Sioux

Lakota has severe housing shortages and poor infrastructure. The Tribe's land is in trust, which makes it difficult for financing. Banks do not want to enter into mortgages on trust land. Treasury has the ability to provide waivers and other means of addressing differences between Tribes. Tribes need to be the ones to define what homeownership is. Treasury waivers will be of a significant help to Tribes if Treasury uses them correctly. The Tribe will continue to work with the federal government. However, the Tribe is not a program of the government but is instead a separate nation. It should be treated as a separate nation.

- **Mr. Poyo** commented that it is an honor to engage in the nation-to-nation relationship with tribes. The more detail that Treasury receives from tribes about the need for waivers, the better Treasury will be able to provide those waivers. Mr. Poyo looks forward to receiving more details on the need for waivers.
- **Ms. Montoya** commented that she appreciates the privilege of engaging in the nation-to-nation relationship. Treasury is engaging in the tribal consultation process and will be submitting a consultation plan to the President. She looks forward to building the tribal consultation program that defines what meaningful and robust means.
- **Executive Director William Goggles, Northern Arapaho Tribal Housing:** Executive Director Goggles appreciates the opportunity to comment on the HAF Program. He supports many of the comments raised by other tribal leaders. In terms of the eligibility of tribal members, he is taking the position that tribes should be able to help tribal members regardless of where they reside, both on and off the reservations. Many tribal members had to leave the reservation because of shortages in jobs and housing. He would like Treasury to consider increasing the allowable administrative costs under HAF. Tribes receiving under \$5 million should be able to use 20 percent (20%) of the allocated funds for administrative costs. The smaller tribes will need to develop and implement the new HAF Program, which will include hiring staff. Regarding the specific challenges that the Tribe faces, the Northern Arapaho Tribe has an average unemployment of 38 percent (38%). Additionally, overcrowding is a severe problem. The Tribe wants to be able to help homeowners with home repairs. The Tribal Housing will manage the HAF funds but will collaborate with the Tribe to manage the funds in connection with other housing programs. Regarding the reporting requirements, many tribal members have unstable and inconsistent access to internet. The Tribe needs funds to help upgrade internet connections, particularly for using it for telemedicine.
- **Executive Director Jody Perez, Salish and Kootenai Housing Authority:** She commented that she appreciates the opportunity to speak with Treasury. One of the most effective way to reach out to tribes is to send out updated FAQs and guidance. Regarding the income levels for HAF eligibility, it would be best to keep it the way the ARPA says and not include an income cap of 150 percent (150%), as Treasury has done in its Treasury Guidance. For documentation, it is very difficult for tribes to obtain W-9 forms from lenders. It would be great if there were a way that Treasury could issue a notice to lenders to guide them in providing W-9 forms. Training and technical assistance is very

helpful. The IHBG allocation works well for the Salish and Kootenai Tribe and Executive Director Perez recommends using that allocation. The HAF does not say who tribes must or can serve, so she recommends making sure that tribes have the flexibility to serve their people both on and off the reservation. Regarding the targeting addressed in the Treasury Guidance, the Salish and Kootenai Tribe has more tribal members above the 100 percent (100%) median income so it would be best if they had the flexibility to serve those tribal members through HAF.

- **Mr. Poyo** commented that the 60 percent (60%) targeting requirement found in the Treasury Guidance is defined in the statute so Treasury unfortunately has no flexibility to change that.
- **Housing Administrator Jeff Ackley, Lac du Flambeau CHA:** The consultation during this administration is better than the consultations held during other administrations. Because of people moving out of cities and into rural areas during the COVID-19 pandemic, the costs of houses are rising. Many renters are therefore being displaced because their houses are being sold. The Tribe is trying to help tribal members who are not necessarily directly affected by COVID-19 but are affected by the indirect consequences—out of state people moving into the rural areas. Tribes need to be able to help relocate tribal members who are displaced. It would be great if there is any funding available to tribes that will allow them to help the displaced tribal members. It would also be great if tribes could assist tribal members from other tribes. Tribal members are tribal members—any assistance that will allow tribes to help all tribal members of all tribes is beneficial.
 - **Mr. Poyo** appreciates the comment on solidarity across tribes.
- **Tonya Plummer, with Montana Native Growth Fund, and on behalf of Fort Belknap Indian Community:** The Fort Belknap Indian Community needs new homes for homeownership. No new homes have been built on the reservation since 1990 and the waitlist is over 300 people long. Most of the existing homes are run down. Fort Belknap has established an enterprise to generate revenue for the tribes, but its staff members have nowhere to live. It is good that down payment assistance is a qualified expense under HAF. The tribes also need gap funding to cover the difference between the high cost of building houses and the low tribal resources. Tribes also need assistance for repairing existing housing stock. Many homes have multiple generations living in one household and those houses are badly in need of repair. The older homes also need to be expanded to provide additional space for the overcrowded families living there, which in turn will help prevent displacement. Tribes need to be able to finance larger ticket projects to develop housing. More funding will allow tribes to provide grants or other low income assistance for tribal members who are not able to obtain mortgages on their own, especially for houses on trust land. Allowing tribes to take a flexible and collaborative approach is critical. Regarding the reporting requirements, the tribal housing authority is bearing the brunt of all of the housing issues, in addition to having to meet the reporting requirements for existing housing programs. The new HAF reporting requirements must therefore be as simple as possible so as not to distract the housing

authority from providing housing to its people. Pairing housing counseling with use of the HAF Program would be an effective way to help homeowners. However, adding the requirement that housing counseling must be provided by HUD-certified housing counseling agencies is an unnecessary burden, as that would exclude tribes.

- **Mr. Poyo** commented that it is clear that follow up is needed. ARPA is focused on mortgage relief, so financing new construction with HAF funds is not a qualified expense under the statute. It is not clear whether Treasury has the authority to list new construction as a qualified expense, but Mr. Poyo will look into that.
- **Kathy Pierre, Treasurer, Lummi Nation Business Council:** The Lummi Nation wants to be able to provide assistance to moderate income tribal members who need help. It would be best to allow tribes to determine the eligibility of homeowners for HAF assistances. Many tribal families have returned to work but are behind on payments, so it would be best if tribes can use HAF funds to cover arrears payments. Any reporting requirements must not be burdensome. It is important that tribes be able to determine what documentation is required for HAF participation by homeowners. Many W-9 and other tax forms are not required for the tribal members so tribes cannot use them for the HAF Program. Additionally, many tribal members do not have traditional employment and will not be able to provide employment verification—it would be best if tribes had the option to not require employment verification. There is a critical need to help tribal members living in older homes badly in need of repair. Tribes would also like to assist homeowners with utility bills. Additionally, it would be great to be able to use some of the HAF funding to draft policies. The Northwest Indian Housing Association (“NWIHA”) hired an attorney to draft the ERAP policy, which was not cheap. Regarding communications with Treasury, tribes would like to have meaningful consultations. It would be useful if Treasury were on standby to answer questions. Tribes and Treasury need to be responsive to each other.
 - **Mr. Poyo** appreciated the specificity of the comments. He noted that utility costs are a qualified HAF expense under the statute. Regarding the income determination questions, Treasury intends to allow tribes to implement policies that work for the tribes. Treasury also intends to allow for either homeowner self-certification along with documentation, or self-certification with a reasonable proxy, such as nontraditional income source.
- **Secretary/Treasurer Michelle Beaudin, Lac Courte Oreilles Tribe:** Secretary Beaudin appreciates the ability to help homeowners in the Tribe. Helping with utilities and mortgage payments would be very beneficial. The Tribe has a severe housing shortage. Tribal members have had to leave the reservation in order to find housing. Additionally, many homeowners are very low income and have houses conveyed through HUD programs. Their low income makes it burdensome to keep up with the repairs on the houses. The Lac Courte Oreilles Tribe faces heavy snows in Wisconsin which cause extensive damages to homes. Any assistance for repairs is useful. Allowing some of HAF funds to be used for repairs for safety would help keep tribal members in their

homes and prevent them from becoming homeless because of the damages to the houses. Treasury should make sure that the reporting requirements are user-friendly and not cumbersome. If there is availability to use HAF funds for down payments and for new mortgages, that would be appreciated.

- **Mr. Poyo** encouraged tribes to look at the Treasury Guidance section on qualified expenses, as many of the expenses tribes have raised are qualified under HAF. Mr. Poyo recognized the need for programs to prevent displacement. The ARPA is written for mortgage assistance, but displacement is noted in the statute. He appreciated the comments about the need for using HAF funds to repair homes to prevent displacement.
- **Tribal Council Member Denise Harvey, Confederated Tribes of Grand Ronde:** Grand Ronde is trying to start its first homeownership project. It has several elders who do not meet the low income requirements but who want to move back to the reservation. It would be great to be able to help those elders through HAF. The key issue for Grande Ronde is the need for money for infrastructure to develop the homeownership project. The infrastructure funds currently come from tribal revenue. Grand Ronde wants to be able to help moderate income people but the Tribes do not have the infrastructure funds needed to develop housing. Many families are working, but once they rise above the low income requirements, there are no resources for them. The IHBG competitive grants are hard to obtain and often must be used for other tribal needs.
 - **Mr. Poyo** commented that infrastructure work would not be eligible under HAF, and IHBG grants from HUD would be more appropriate. However, the point about income ranges is important. The ARPA requires that not less than 60 percent (60%) of the HAF funding must go to households making equal to or less than 100 percent (100%) of the median income. The median income definition is different from what tribes are probably used to, which may be beneficial. Treasury will take in tribal feedback to provide further flexibility for tribes.
- **Chairwoman Victoria Kitcheyan, Winnebago Tribe:** The Tribe would like to be able to use HAF funds for new mortgages. Homelessness in Indian country is different than it is elsewhere. It often means multigenerational living, with many generations living in the same household. This has created significant problems during COVID-19 because of overcrowding. It is hard for individuals to quarantine and maintain safe distances. It would be best to raise the income level for HAF eligibility. Many families have only one source of income, or have only a fixed income. There must be flexibility for tribes for the HAF funding, especially for homeowners who have moved out of the low income programs but who do not have enough money to enter into mortgages. Tribes need to be able to use HAF funds to reach tribal members living both on and off reservation. Because of housing shortages, tribal members have moved off reservation and all across the country to find jobs and housing. Regarding the reporting requirements, the Tribe asks that they not be burdensome and not look like the CARES Act reporting requirements. The Tribe is looking to increase homeownership. FAQs are one of the best ways to answer questions. Every household is different in how it deals with

COVID-19 challenges, so it is best that tribes have the flexibility to help their people in a way that fits the families.

- **Mr. Poyo** appreciated the comments regarding the mix of rental and homeownership problems that tribes face. Treasury is managing both ERAP and HAF side by side so it welcomes communications about the two programs and the problems of people who do not fit under either program.
- **Tribal Council Secretary Stuart Redwing and Tribal Chairman Roger Trudell, Santee Sioux Nation:** About 79 homeowners are living in substandard housing. Houses are in desperate need of repair. Would tribes be able to obtain any help to repair the housings? That is the bulk of the Santee Sioux Nation's needs. Additionally, will Treasury provide any guidance on developing a tribal policy for HAF?
 - **Mr. Poyo** remarked that HAF funding can potentially be used for repairs to houses. It would be important that the tribe write its policy to include housing repairs. If the tribal program intends the repairs to prevent displacement, then it is potentially a qualified expense. Mr. Poyo looks forward to engaging with tribes to make sure the details of the HAF policies are correct. He will follow up with tribes on creating policies. Treasury is committed to working with tribes to help them set up the HAF program.
- **Assistant Chief Jeff Wacoche, United Keetoowah Band of Cherokee:** Assistant Chief Wacoche emphasized the need for tribal flexibility on providing assistance through HAF. Because of ice storms and other winter weather, utility companies price gouged utility users and the costs of utilities rose drastically. Any flexibility in providing assistance would be useful.
- **President/CEO, Jacqueline Pata, Tlingit Haida Regional Housing Authority:** Will tribes providing housing services for multiple tribes be eligible to receive HAF funding? The Treasury Guidance provision listing housing counseling as an eligible expense is of a concern because tribes and TDHEs are currently not eligible to be certified by HUD as counseling agencies. For Alaska, the HUD-approved counseling agency is located in Anchorage, far away from many tribes. Many tribes provide their own housing counseling to their tribal members. Tribes are currently engaging in consultation with HUD on this matter, but in the meantime, it would be best if Treasury provided tribes with flexibility regarding the housing counseling criteria. President Pata is looking forward to seeing the HAF plan template but wanted to know if it would include flexibilities for tribes. With regards to overcrowding, she wanted to make sure that new homeowners are eligible for HAF programs, including for interest rate reduction. She requested that tribes and TDHEs be able to coordinate with other entities in implementing the HAF program. President Pata supports flexibility for tribes, including the need for creating new homeownership opportunities. Access to capital has always been one of the greatest barriers to homeownership. With regards to repairs, it would be best if tribes and TDHEs are able to add additional bathrooms or extra bedrooms for overcrowded families to be able to quarantine and remain safe during the pandemic. It would also be useful if

the HAF Program provided flexibility to allow homeowners to obtain clean titles as a qualified HAF expense. Regarding the median income issue, Alaska tribes prefer that it be based on the area median income instead of the national one. It would therefore be best if all tribes had the flexibility to use whichever median income best serves their respective communities. President Pata recommended that technical assistance be included as a HAF qualified expense. Regarding data, HUD has said that the census data would be used to allocate funding. This creates a problem for tribes because tribal members are continually undercounted. Tribes have developed other sources of data that better identify community needs and it would be best if tribes could rely on this data instead. With regards to reporting, it would be best that the requirements be consistent with the ERAP requirements and with programs for which tribes already have to provide information.

- **Mr. Poyo** commented that he appreciates the housing counseling concern and will take a hard look at that issue. Treasury will issue a specific HAF plan template, but tribes can expect that plan to be narrower for those tribes that receive under \$5 million in HAF funding. Mr. Poyo also encouraged everyone to look at how Treasury has defined median income in the Treasury Guidance.
- **Sharon Vogel, Cheyenne River Housing Authority Executive Director, and United Native American Housing Association Chairman:** Executive Director Sharon Vogel appreciates the open-mindedness of the Treasury staff. The take away should be that tribes are sophisticated and creative in approaching problems. The Tribe needs funds to be able to purchase defaulted homes so that the Tribe can provide those homes to other tribal members. Homeownership is different from tribe to tribe and tribes need the flexibility to create their own solutions. Tribally-managed solutions are the best, as the tribes know what works for their people.

Mr. Poyo closed the call by noting his gratitude for the tribal representatives who spoke. He appreciates the opportunity to engage in the nation-to-nation relationship with tribes. In the next round of guidance, Treasury will incorporate what it has learned today. Mr. Poyo encouraged tribal representatives to contact Treasury with any questions, comments, or concerns by sending an email to tribal.consult@treasury.gov.

III. HUD Issues Guidance on IHBG-ARPA Funding

ARPA also provided \$450 million in Indian Housing Block Grant funding (IHBG-ARPA). On April 14, 2021, HUD Office of Native American Programs (“ONAP”) issued its implementation guidance on the use of the IHBG-ARPA funds, which guidance is attached and is also available here: https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-11pihn.pdf?utm_medium=email&utm_source=govdelivery

The allocations for the IHBG-ARP funding are based on the 2021 IHBG formula. HUD ONAP has released a chart showing the allocations of such funding, which is attached and linked here: https://www.hud.gov/sites/dfiles/PIH/documents/IHBG-ARP_for_Codetalk3.24.21.pdf

HUD ONAP has crafted the implementation guidance to closely mirror the guidance for the application for and use of IHBG-CARES funding. To receive the IHBG-ARPA funding tribes and TDHEs will need to file an Abbreviated Indian Housing Plan (“AIHP”), which will be identical in format to the AIHP for the IHBG-CARES funds. The AIHP is a streamlined fillable PDF version of the regular Indian Housing Plan (“IHP”)/APR. Under the AIHP, HUD is requesting less information than is normally included in a regular IHP/APR and including certain data fields to capture ARPA requirements. The regular IHP/APR form contains a total of 15 sections that IHBG recipients are normally required to complete. Under the AIHP, IHBG-ARP recipients are only required to complete seven sections. AIHPs must specify how the IHBG-ARP recipient will carry out activities or projects that meet the requirements of ARPA.

HUD is providing regulatory waiver relief pertaining to the AIHP, including the following (provided in summary form):

- HUD will accept any AIHP that cannot be formally adopted by an Indian tribe or TDHE in accordance with their normal policies and procedures for adopting IHPs, provided an official or principal of the Indian tribe or TDHE who is authorized to act on behalf of tribe or TDHE provides a statement that it is not practical or safe for the Indian tribe or TDHE to assemble a board or other governing body to conduct business to secure required approvals, at the time, due to the impact of COVID-19. The tribe or TDHE should take the necessary action, at a later date, when it is feasible and safe to do so, to either ratify the AIHP previously, if required under its policies and procedures, or submit an amendment to the Abbreviated IHP.
- IHBG recipients are required to provide HUD with all required IHP certifications in their AIHPs. However, if an authorized official of an Indian tribe or TDHE provides a statement to HUD indicating that it is not practical or safe for the Indian tribe or TDHE to secure new certifications due to the impact of COVID-19, HUD will accept IHP certifications that were previously submitted and accepted by HUD for Fiscal Year (“FY”) 2021 IHBG. IHBG recipients that choose to use this alternative requirement will be deemed to have submitted such past certifications for the IHBG-ARPA grant.
- TDHEs may submit AIHPs on behalf of their beneficiary Indian tribes without having to provide any required new IHP Tribal certifications when applying for an IHBG-ARP grant. However, these TDHEs are required to consult with their beneficiary Indian tribes that they serve, in a manner that is feasible and when it is safe and practical to do so, and submit any appropriate amendments or certifications to their AIHPs if they are directed to do so by the beneficiary Indian tribe

Once HUD finds the AIHP is in compliance, HUD will email the grantee an award letter and a grant agreement package to sign and return via email. Funds will be available to draw down from the Line of Credit Control System (“LOCCS”) when the fully executed grant agreements are returned and processed by HUD. All documents will be provided in electronic file format and must be returned in electronic file format.

IHBG-ARPA funds for direct costs related to preventing, preparing for, and responding to COVID-19, as well as for “maintaining normal operations.” The guidance provides the following summaries:

- Prepare for: IHBG-ARPA grant funds may be used prior to a local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to develop processes and procedures to help keep people healthy, and other activities designed to reduce the risk of exposure to COVID-19 and avoid or slow the spread of the disease. Examples may include housing activities designed to reduce severe overcrowding, providing food delivery services to eligible families (including the elderly, disabled, and other high-risk populations) to allow them to shelter in place, and public health campaigns designed to educate families on how to prepare for a possible outbreak in the community and ways to minimize community spread.
- Prevent: IHBG-ARPA grant funds may be used during a COVID-19 local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to prevent the initial or further spread of the virus to staff, Tribal housing residents, and the Tribal community. Examples may include distributing Personal Protective Equipment (“PPE”) to housing maintenance staff, residents, and members of the community, using IHBG- ARP funds to clean common areas to prevent infections, using IHBG-ARP funds to facilitate the vaccination of IHBG-assisted residents and IHBG recipient staff, and much more.
- Respond to: Once COVID-19 has spread to staff, Tribal housing residents, and/or the Tribal community, examples of how Indian tribes and TDHEs may choose to respond to COVID-19 may include using IHBG-ARPA grant funds to care for those who have become infected and to limit the exposure and spread of the virus, provide rent assistance to eligible families that cannot pay rent, carrying out activities to reduce severe overcrowding, prevent homelessness to ensure families are stably housed, and much more. Funds may continue to be used after the local, service area, or regional coronavirus outbreak on any continuing expenses incurred due to the spread of COVID-19.
- Maintaining normal operations. In most cases, maintaining normal operations and carrying out eligible activities, projects, or programs during the period that a recipient’s program is impacted by COVID-19 will likely tie back to the “Respond to” COVID-19 purpose. However, HUD recognizes that there may be circumstances where maintaining normal operations and carrying out eligible activities may tie back to the “Prepare for” or the “Prevent” eligible purpose. One example of maintaining normal operations is using IHBG- ARP funds to carry out eligible IHBG activities that the recipient initially planned to carry out with its regular IHBG funds but did not because it had to use its regular IHBG funds to carry out an unplanned activity to prevent, prepare for, or respond to COVID-19. In this scenario, the IHBG- ARP grant funds can be used to carry out the original IHBG activity that the recipient

planned on carrying out, but did not carry out, due to COVID-19.

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

The guidance goes on to list a number of specific examples of activities that would fall under each of these categories, which are essentially the same as those activities listed under the IHBG-CARES Act guidance from last Spring/Summer:

Eligible Housing Activities

- Carrying out activities eligible under IHBG provided those activities will prevent, prepare for, and respond to COVID-19;
- Payment of tenant and homebuyer utilities;
- Installing a lockbox or other method for collecting rent payments without the need for personal contact;
- Supporting laundry facilities to assist residents with eliminating the spread of COVID-19;
- Paying for IHBG operating costs due to a significant reduction in rent receipts caused by COVID-19;
- Providing essential housing services to shelter residents including childcare, education services, employment assistance, outpatient health services, legal services, mental health services, and transportation, provided such services are not duplicative of other Federally funded services;
- Working with resident groups to help educate residents on social distancing and other practices designed to minimize the risk of community spread of COVID-19;
- Acquiring, constructing, converting, or rehabilitating structures to reduce and prevent homelessness, and reduce vulnerability to COVID-19.

Emergency Response

- Carrying out activities that would prevent individuals from becoming homeless and rapidly rehousing homeless individuals;
- Acquiring, constructing, converting, or rehabilitating structures that can serve as temporary emergency shelters, or converting existing facilities for this purpose, to ensure homeless persons are provided safe shelter and to minimize the risk of community spread of COVID-19;
- Providing short-term rental assistance to homeless persons in hotel/motels to minimize infection and spread of COVID-19;
- Providing units or other space for temporary quarantine purposes as a result of COVID-19;
- Providing emergency housing for health care workers;
- Purchasing Telehealth equipment to allow assisted residents access to health care providers from home;

- Purchasing and distributing PPE such as gloves, surgical masks and goggles, hand hygiene products, soap, paper towels, hand sanitizer, hand wipes, tissues, and thermometers;
- Purchasing and distributing cleaning products such as disinfectants, sanitizers, waste disposal supplies, and other supplies to disinfect homes of residents, common areas, housing-related public facilities, and other public spaces like playgrounds;
- Purchasing of sanitation equipment;
- Purchasing and distribution of water, groceries, prescriptions, and other items for quarantined families, Elders, Veterans, at-risk populations, or disabled households;
- Purchasing beds or cots for isolation/quarantine centers;
- Paying the transportation costs to get IHBG-assisted families and staff of the IHBG recipient to and from a vaccination site;
- Coordinating with health clinics to provide on-site vaccinations either at a Tribal or TDHE owned or operated location or at a mutually agreed upon location;
- Paying the costs of providing public health information to staff and residents so they can learn about the benefits of getting vaccinated and how to get vaccinated;
- Supporting IHBG-assisted families and staff of the IHBG recipient with online registration for vaccination appointments and keeping them informed as vaccination efforts continue.

Administrative Activities

- Preparing housing or TDHE staff and Board of Commissioners to conduct business in a remote working environment, and providing them with necessary supplies to carry out the IHBG program;
- Setting up web-based communication options for program participants and staff;
- Implementing policies, procedures, and other measures to protect vulnerable populations;
- Revising the approval process for policies and procedures in order to limit person-to-person contact;
- Paying staff salaries including the salaries of employees who must shelter in place or are otherwise prohibited from interacting with community members due to COVID-19;
- Paying hazard pay for essential workers that are managing or maintaining units, or staffing emergency or isolation centers, provided such costs are considered necessary and reasonable under 2 C.F.R. Part 200;
- Paying transportation costs of staff to perform IHBG program functions or assist tenants in accessing food, medical care, or prescriptions.

The guidance also lists the waivers that are being applied across the board, which again are essentially the same as those for the IHBG-CARES Act.

###

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