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## MEMORANDUM

July 13, 2021

TO: TRIBAL HOUSING CLIENTS

FROM: Edmund C. Goodman  
HOBBS, STRAUS, DEAN & WALKER, LLP

RE: *Homeowner Assistance Fund: Second Tribal-Treasury Consultation*

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This memo reports on the U.S. Treasury Department (“Treasury”) tribal consultation on the Homeowner Assistance Fund (HAF) Program held earlier today. On the call from Treasury were Deputy Assistant Secretary Noel Poyo, Tribal Liaison Nancy Montoya, Will Corbett, and Vikram Viswanathan (the latter two are subject matter specialists working on the HAF Program). The purpose of the consultation was to receive tribal input, comments, and questions on the HAF Program. This is the second consultation on the HAF Program. Mr. Poyo stated the initial tribal consultation was very helpful and very positive. The next round of guidance is somewhat delayed. Treasury was hoping to have published the next round of guidance prior to this consultation, but unfortunately was not able to do so.

In addition to this consultation, Treasury is accepting written comments and questions on the HAF Program. You can submit comments and questions to the following email: [tribal.consult@treasury.gov](mailto:tribal.consult@treasury.gov). **The deadline for comments and questions related to the HAF Program is July 23, 2021.** Treasury is encouraging tribes and TDHEs to send comments and questions in writing. Please let us know if you would like assistance in drafting and submitting comments and questions.

Mr. Poyo noted that to receive the second payment of ninety percent (90%) of your HAF Program funding, you will need to submit a HAF Plan, but you can use the initial ten percent (10%) with a great degree of flexibility. To draw down the remainder of their money, tribes will need to submit and have a HAF Plan approved. Treasury is cognizant the plan for tribes is going to look different than those for states. Treasury will develop an abbreviated HAF Plan appropriate to the size of the tribes relative to the size of states and their programs. The tribal submission deadline is September 30, 2021.

*David Arroyo, Chairman, Grand Traverse Band of Ottawa and Chippewa Indians*

Chairman Arroyo posed two questions: (1) Given the rising costs for maintaining the households, has Treasury given any consideration of raising the income guidelines? (2) Can weatherization be included under utilities?

Mr. Poyo noted the income eligibility guidelines are governed by the statute, but Treasury is trying to work with tribes to be flexible.

As for weatherization, while utilities may be one area to consider, Mr. Poyo noted HAF can be used to “prevent displacement,” and if weatherization of a home is needed to prevent displacement, it would fit under HAF Program guidelines.

*Victoria Kitcheyan, Chairwoman, Winnebago Tribe of Nebraska*

Chairwoman Kitcheyan stated that providing downpayment assistance (DPA) is important and Treasury should allow use of HAF Program funds for DPA to help with overcrowding. Use of HAF Program funds for DPA will enable younger tribal members to obtain their own housing and mitigate overcrowding.

Mr. Poyo stated that he really appreciates this point. The reason that DPA is not eligible under HAF is not within Treasury’s discretion; the statute does not allow for use of HAF Program for DPA. But there are other sources of funding that can be used for this and we are open to ongoing engagement around this so we can help match the resources to this need.

*Andrew Steven, Tribal Administrator, Atmautluak Traditional Council*

Mr. Steven noted that initial HAF Program guidance mentioned water as a utility. In our tribe, we do not have water systems to homes. Can we use these funds to develop water and sewer systems?

Mr. Poyo stated that the intent of this provision is to allow these funds to be utilized for anything that is used as a utility. They have not made a decision on whether to utilize funds for infrastructure development, but will look into this and address it in the next round of guidance.

Follow up question: can we use the funding for surveyors to plat lands and easements for development of future housing?

Mr. Poyo said that while HAF Program funds cannot be used for construction of new houses or DPA, the funds can be used to prevent displacement. If this work is needed to prevent displacement of an existing homeowner, it might be eligible. Treasury will address this in the next round of guidance.

Can we use the funds to develop utility connections to a household? And a follow-up was: can you use the funds to develop green energy?

Mr. Poyo noted that the funds can be used to be paid for utilities, and it is a good question as to whether it can be used for developing green energy. Treasury will address this question.

Can HAF Program funds be used to pay for insurance?

Yes, so long as the insurance is for the home itself. For example, life insurance would not be eligible, but casualty insurance, flood insurance, and fire insurance are.

Final question: does the HAF Program require that the funds be utilized only for tribal members or citizens? Do they have to be on tribal lands?

There are no geographical restrictions on the use of HAF Program funds.

*Sorhna Li, CFO, Scotts Valley Band of Pomo Indians*

Expressed concern about limitation on using funds for administration expenses, and for overly burdensome documentation requirements, because tribes have limited staff and resources. She also raised questions about the use of Area Median Income (AMI) vs. National Median Income (NMI), as well as expressing concern about not being able to use these funds for DPA. She also asked whether indirect costs can be applied to the HAF Program.

Mr. Poyo made the following points: There will be a streamlined HAF Program Plan for “smaller” tribes to limit the paperwork required (he did not define “smaller”, but promised that Treasury would be publishing this soon, and “smaller” would be determined by the size of the allocation); he also wanted to underscore that the determination of income is the most burdensome administrative function, and Treasury has allowed for self-certification of income by the household with a fact-specific proxy (such as census tract data). In the Emergency Rental Assistance Program (ERAP), this approach has helped to reduce paperwork burdens. Treasury has not published specific guidance on how to do this, but Treasury will be publishing some examples

*Joey Nathan, Executive Director, Northern Ponca Housing Authority*

Is there flexibility for grantees in developing their HAF Program? The tentative answer is yes, Treasury will provide substantial flexibility so long as the tribal plan meets the statutory requirements. Treasury will review the HAF Program Plan and approve or provide feedback.

*Cheryl Andrews-Maltais, Chairwoman, Wampanoag Tribe of Gay Head (Aquinnah).*

Chairwoman Andrews-Maltais spoke to the high cost of living in her tribe's area, and the amount of wealthy people in the area who raise the AMI. Will recipients have the flexibility to serve tribal members who may have higher incomes but who also have a much higher cost of living? She also asked about the abbreviated HAF Program Plan for smaller tribes. Finally, will self-governed tribes have the same broad flexibility to expend these funds as they do under self-governance agreements?

Mr. Poyo will look into the specifics of her situation regarding income and cost of living. The HAF Program Plan template has not been posted yet. Regarding designing the HAF Program to meet tribal needs - Treasury wants to be as flexible as possible, but there are statutory requirements Treasury probably does not have the ability to modify. He will consult with his attorneys further to see if there is anything related to tribes' sovereign status.

*Charlie Norton, HUD Director, Native Village of Kivalina*

Mr. Norton raised questions about the very high costs of construction in Alaska and in his remote region. Can he use these funds to supplement HUD funding to construct an apartment building? He also asked for technical assistance.

Mr. Poyo began by noting that Treasury has been engaged in collaborative technical assistance, and invited tribes and TDHEs to participate because engaging in group technical assistance may be even more effective. Treasury is also committed to one-on-one technical assistance. But the funds cannot be used for construction of an apartment building.

*Tonya Plummer, Executive Director, Montana Native Growth Fund*

To what extent can we make a judgment call on rehabilitation and repairs regarding what consists of preventing displacement? For example, roof repair for a leaking roof? Electrical wiring? Related interior repairs? She also urged that more flexibility be provided to use funds for construction and for DPA. She urged Treasury to not require the use of HUD-certified counselors, and allow tribes to utilize their own counselors.

Mr. Poyo stated a tribe would develop its standards for determining what kind of repairs and rehabilitation is needed to prevent displacement in its HAF Program Plan. Then Treasury will review and approve or modify. Treasury is not going to publish a one-size-fits-all approach, but will work on this issue tribe-by-tribe. Treasury is looking into whether expansion of an existing home would meet the requirements of the HAF Program and he encouraged tribes who are interested to include such an element (with appropriate details) in their HAF Program plans.

*Questions from chatbox.*

Can tribes aggregate homeowner insurance policies into a single policy to reduce the cost of premiums?

Mr. Poyo thinks this may be outside of the HAF Program. The funds in this Program can be used to pay for insurance and pooling or aggregating is outside the scope of the Program.

What percentage of the funds can be used for administrative expenses?

The statute sets it at fifteen percent (15%).

Where does Treasury stand with the HAF Program Plan?

First, the June 30 submission deadline applies only to states. Tribes are not under that same deadline. Tribes do not have the same deadline to submit a HAF Program Plan, but must make a request for the release of the remaining ninety percent (90%) of HAF Program assistance by September 30, 2021. There will be a HAF Program Plan template, one for states and one for smaller grantees. It has not yet been released. There will also be an online submittal process. Treasury will be issuing additional guidance “soon,” and that guidance will include the HAF Program plan templates.

How are mortgages with co-signors treated under HAF Program?

This issue will be addressed in the forthcoming guidance. But the assistance is intended for the person who owns and lives in the home. Treasury does understand the co-signor may have a significant role.

There are people whose income is based on rental properties. If these people are using their rental income, and thus their income, then can this funding be used to upgrade or renovate these properties? In other words, must the funding be used on the primary residence or can it be used on rental properties that are a source of income?

The HAF Program is a program that focuses on owner-occupied homes, so these costs would **not** be eligible.

Can HAF Program funds be used for owners of mobile homes?

This matter will be addressed in the upcoming guidance.

*Conclusion*

If you have not yet received the email to draw down the initial ten percent (10%) of HAF Program funding, send an email to [tribal.consult@treasury.gov](mailto:tribal.consult@treasury.gov). Instructions from Treasury will be sent to you afterwards.

We will continue to update you as Treasury releases additional guidance and FAQs on the HAF Program. If you have any questions about the HAF Program, please do not hesitate to contact Ed Clay Goodman ([egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com) or 503-242-1745).