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## MEMORANDUM

June 17, 2021

To: TRIBAL HOUSING CLIENTS

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

Re: ***HUD ONAP Presentation on Housing Strategies during COVID-19***

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The U.S. Department of Housing and Urban Development (“HUD”) Office of Native American Programs (“ONAP”) hosted a webinar on June 16, 2021, to assist Tribes and Tribally designated housing entities (“TDHEs”) in understanding their role in responding to a pandemic such as the COVID-19 pandemic, and steps that can be taken to reduce the impact of the pandemic in the workplace and surrounding community. The webinar included a substantial amount of useful information, which is detailed in Exhibit A to this memo.

The ONAP webinar on addressing community and housing safety needs was the second in a series following the first webinar hosted in April 1, 2021. A recording of the first webinar can be found [here](#). Charles Anderson, owner of Northwest Housing Consultants, LLC, gave opening remarks. Also on the call was Iris Friday, ONAP Native American Program Specialist. Mr. Anderson began the presentation by noting the importance of staying up-to-date on the latest Centers for Disease Control and Prevention (“CDC”) guidance and Tribal, state, and local laws and regulations on COVID-19. Tribes and TDHEs should consider revising their policies and procedures to reflect the most recent COVID-19 guidance.

While a number of topics were covered in detail during the webinar, many addressed practical considerations and best practices. In this memo we will only summarize those areas that involved legal questions. If you are interested in any of the other information, please let us know and we can provide it to you. The full set of topics covered were the following:

- Communication strategies,
- Strategies for working both virtually and returning to in-person work,
- COVID-19 preventative measures,
- Implementing a screening and testing strategy,
- Addressing community needs, and
- Future considerations for housing management.

If you have any questions about this memo or the details on Exhibit A, please do not hesitate to contact me at [egoodman@hobbsstraus.com](mailto:egoodman@hobbsstraus.com), or by phone at (503) 242-1745.

## **EXHIBIT A**

### **Summary of Legally-Relevant Information Provided During HUD Webinar**

#### **I. Communication Strategies**

One key strategy for Tribes and TDHEs to use during a pandemic is to communicate up-to-date information to employees, third-party contractors, and housing tenants, particularly where such information involves changes in eligibility guidelines, availability of new programs, etc.

Communicating effectively with staff members is critical to being able to continue to provide housing services during a pandemic. Tribes and TDHEs can keep lines of communication open through a messaging service which might work better than e-mail for quick conversations, project management, and sharing files quickly with the whole team. E-mail should still be used for formal communications, such as leave requests, formal assignments, and using company resources.

It is also critical to train workers on how implementing any new policies to reduce the spread of the virus may affect existing health and safety practices. Tribes and TDHEs should communicate to any contractors or on-site visitors about the changes to the safety rules and policies, and what steps they must take to communicate with the housing staff. It is important to ensure that the contractors have the information and capability necessary to comply with those policies.

To make the workplace safe for employees, Tribes and TDHEs should create and test communication systems that employees can use to self-report if they are sick and that Tribes and TDHEs can use to notify employees of exposures and closures. One method to consider is using a hotline or similar communication platform through which employees can voice concerns anonymously.

When all or most employees are working remotely, another key strategy is to ensure that staff members have access to work files. To do so, Tribes and TDHEs can digitize their files so that staff will continue to have access when not in the office. There are a number of shared file management systems that Tribes and TDHEs can implement, such as Dropbox, OneDrive, or Google Drive. These all include security measures to make sure that only those approved will have access to the files. The management systems also allow users to create shared folders so that multiple staff members can work on a single document simultaneously. While staff may have their own drafts of a document in a separate folder, final or near-final working documents can be uploaded to the shared folder.

#### **II. Program Goals and Absenteeism**

Dealing with absenteeism during the COVID-19 pandemic can be challenging. It is best to determine ahead of time how you will operate if absenteeism spikes from increases in the number of sick employees, those who must home to care for sick family members, or those who

must stay home to watch their children until child care programs and schools can resume their normal schedules. It may be useful to develop plans or policies that Tribes and TDHEs can implement in order to continue essential business functions in case they experience higher-than-usual absenteeism. Instituting flexible workplace and leave-of-absence policies can help mitigate absenteeism. It is also important to cross-train employees on tasks and skills, so that if one employee is absent, someone else is trained to cover that employee's tasks and duties.

### **III. Strategies for Both Working Virtually and Returning to In-Person Work**

Tribes and TDHEs can play a key role in preventing and slowing the spread of COVID-19 within the workplace. It is important to describe all preventative measures and procedures in the housing program policy so that employees are informed and can refer back to the policy. Employers' COVID-19 preparedness, response, and control plans should take into account workplace factors such as the:

- Feasibility of social distancing in the workplace;
- Ability to stagger employee shifts;
- Degree to which employees interact with the public in person;
- Feasibility of accomplishing work by telework;
- Geographic isolation of the workplace, whether employees live in congregate housing, and the proportion of employees who are at an increased risk for severe illness;
- Policies regarding sick leave for staff;
- Priority of continuity of operations, such as which operations are critical to continue during a pandemic; and
- The level of COVID-19 disease transmission in their communities.

It is important to assess essential functions and prioritize operations and functions based on how critical they are to the health and safety of the community and housing tenants. There are a number of steps that Tribes and TDHEs can take to efficiently prioritize operations during a pandemic:

- Be prepared to change business practices if needed to maintain critical operations (e.g., temporarily suspend certain operations in order to prioritize critical ones).
- Identify alternative supply chains for critical goods and services. Some goods and services may be in higher demand or may be unavailable.
- Talk with contractors and others providing services about the importance of sick employees staying home, and encourage them to develop non-punitive leave-of-absence policies.
- Identify and prioritize job functions for continuous operations. Minimize the number of workers present at worksites by balancing the need to protect workers with support for continuing operations.

## IV. COVID-19 Preventative Measures

### *a. Reducing Risk*

Some of the key elements to implementing a workplace COVID-19 prevention program include conducting a hazard assessment, identifying measures to limit the spread of COVID-19, ensuring infected workers are separate from other workers, and implementing protections from retaliation from disgruntled workers. Tribes and TDHEs should implement a workplace risk assessment, and should treat workers differently based on the risk level for each worker. More safety precautions are necessary for those working in environments with higher levels of exposure to COVID-19.

- **Lower exposure risks:** jobs that do not require contact with suspected COVID-19 cases. Minimal contact with public and coworkers (e.g., employees working remotely).
- **Medium exposure risk:** jobs that require frequent and/or close contact with suspected COVID-19 cases. May have contact with public, or work indoors with poor ventilation (e.g., maintenance and construction workers, some office workers, housing workers conducting in-home services during ongoing community spread when household members have been pre-screened for COVID-19 signs and symptoms).
- **High risk:** jobs that have high potential for exposure to known or suspected COVID-19 cases (e.g., health care workers and maintenance and construction workers).
- **Very high exposure risk:** high potential for exposure and conducting specific procedures that increase exposure (e.g., health care workers conducting aerosol-generating procedures on known or suspected COVID-19 cases, housing workers conducting in-home services during ongoing community spread without household member pre-screening or when entering the home of a known COVID-19 case).

The Occupational Safety and Health Administration (“OSHA”) has released guidance on mitigating and preventing the spread of COVID-19 in the workplace and protecting at risk workers, which can be found [here](#). It is important to follow COVID-19 prevention guidance. This includes:

- Providing vaccinations following CDC recommendations;
- Using alternative work schedules;
- Conducting staff and visitor COVID-19 screening;
- Maintaining social distancing;
- Providing mask updates for vaccinated individuals;
- Making sure buildings are well-ventilated;
- Making sure employees and visitors wash their hands;
- Cleaning and disinfecting common areas; and
- Providing personal protective equipment (“PPE”).

Tribes and TDHEs should separate and send home any individuals who are infected. Workers who have or likely have COVID-19 should be isolated until they meet CDC guidelines for exiting their isolation. If they think or know they had symptoms, they can return after:

- At least 10 days or longer since symptoms first appeared;
- At least 24 hours with no fever without using fever-reducing medication; and
- Other symptoms of COVID-19 are improving (loss of taste and smell may persist for weeks or months and need not delay the end of isolation).

Workers should quarantine if they have been exposed to COVID-19, which means:	CDC guidance provides that individuals who have been exposed should:
<ul style="list-style-type: none"> <li>• They were within 6 feet of someone who has COVID-19 for a total of fifteen 15 minutes or more within a 24-hour period,</li> <li>• They provided care at home for someone who is sick with COVID-19,</li> <li>• They had direct physical contact with a person who has COVID-19</li> <li>• They shared eating or drinking utensils with a person who has COVID-19, or</li> <li>• Someone who has COVID-19 sneezed, coughed, or somehow got respiratory droplets on them.</li> </ul>	<ul style="list-style-type: none"> <li>• Stay home for 14 days after last contact with a person who has COVID-19,</li> <li>• Watch for fever (100.4 degrees Fahrenheit), and</li> <li>• To the extent possible, stay away from others, especially people who are at higher risk for getting very sick from COVID-19.</li> </ul>

***b. Social Distancing Strategies for the Workplace.***

During a pandemic, Tribes and TDHEs should alter their workspace to help workers and clients maintain social distancing and to physically separate employees from each other and from clients, when possible. Here are some strategies that businesses can use:

- Implement flexible worksites (i.e., telework);
- Implement flexible work hours (e.g., rotating or staggering shifts to limit the number of employees in the workplace at the same time);
- Increase physical space between employees at the worksite;
- Increase physical space between employees and clients/customers at the worksite;
- Use signs, tape marks, or other visual cues to indicate where to stand when physical barriers are not possible;
- Implement flexible meeting and travel options;
- Close or limit access to common areas where employees are likely to congregate and interact;
- Prohibit handshaking; and
- Deliver services remotely (e.g., via telephone, video, or web).

Tribes and TDHEs should install barriers where physical distancing cannot be maintained, such as transparent shields or other solid barriers to separate workers from other people. The barriers should block face-to-face pathways between individuals in order to prevent the direct transmission of respiratory droplets. When an opening in the barrier is necessary to permit the transfer of items, the opening should be as small as possible. However, barriers do not replace the need for physical distancing.

### *c. Other Safety Measures*

In addition to these measures, employers may want to follow suggested guidelines on use of face coverings. CDC guidance provides that individuals should wear a face covering that covers the nose and mouth as a measure to contain the wearer's respiratory droplets and protect others. It may also protect the wearer. However, wearing a face covering does not eliminate the need for physical distancing of at least 6 feet apart. Employers should provide all workers with face coverings at no cost to ensure that employees follow the guidance.

Improving ventilation is an effective way to mitigate risk. Tribes and TDHEs should ensure ventilation systems operate properly and provide acceptable indoor air quality for the current occupancy level for each space. It is important to increase ventilation rates when possible. It is also important to provide the supplies necessary for good hygiene practices in workplaces. Tribes and TDHEs should ensure that workers, clients, and visitors have supplies, at no cost, to clean their hands frequently and cover their coughs and sneezes.

Tribes and TDHE should perform routine cleaning and disinfection of all frequently touched surfaces in the workplace, such as workstations, keyboards, telephones, handrails, and doorknobs. A list of products that are approved by the U.S. Environmental Protection Agency ("EPA") for use against the COVID-19 virus is available on the EPA website. Providing disposable disinfecting wipes so that workers can wipe down commonly used surfaces before each use can be effective as well.

Tribes and TDHEs can also minimize the spread of COVID-19 by implementing procedures and policies governing common areas, such as shared kitchens and dining areas, laundry rooms, and activity rooms. During a pandemic, it is important to restrict the number of people allowed in common areas at one time so that everyone can stay at least 6 feet apart from one another. People who are sick and those who have a higher risk of suffering severe symptoms from COVID-19 should not be served in common areas.

## **V. Implementing a Screening and Testing Strategy**

### *a. Testing Legal Framework*

According to the Americans with Disabilities Act ("ADA"), when employers implement any mandatory medical testing of employees, it must be "job related and consistent with business necessity." In the context of COVID-19, the Equal Employment Opportunity Commission

(“EEOC”) notes that testing to determine if an employee has COVID-19 with an accurate and reliable test is permissible as a condition to enter the workplace because an employee with the virus will pose a direct threat to the health of others. The EEOC notes that testing administered by employers that is consistent with current CDC guidance will meet the ADA’s business necessity standard. However, workplace testing should not be conducted without the employee’s consent.

Tribes and TDHEs do not need to test fully vaccinated people with no COVID-19 symptoms and people who have tested positive for COVID-19 within the past three (3) months and recovered, as long as they do not develop new symptoms. People who should be tested include those:

- Who have COVID-19 symptoms;
- Who have had close contact (within 6 feet of an infected person for a cumulative total of fifteen (15) minutes or more over a 24-hour period) with someone confirmed to have COVID-19;
- Who have taken part in activities that put them at higher risk for COVID-19 because they cannot physically distance as needed (e.g., traveling, attending large social or mass gatherings, or otherwise being in crowded indoor settings); or
- Who have been asked or referred to get tested by their healthcare provider, or state, Tribal, or territorial health department.

***b. Screened Testing***

Throughout the pandemic, and as Tribes and TDHEs transition to returning to normal procedures, it is best to have an in-person screened testing process in place in case they decide to use it. Asking employees to take their own temperature either before coming to the workplace or upon arrival at the workplace can minimize the risk of exposure. Ask the employee to confirm that their temperature is less than 100.4 degrees Fahrenheit. During any screening, the screener should stand behind a physical barrier and make a visual inspection of the employee for signs of illness (e.g., flushed cheeks, sweating, difficulty with ordinary tasks, etc.). When conducting temperature and symptom screenings, the screeners should wear masks and disposable gloves. They should reach around the physical barrier to check an employee or visitor’s temperature, making sure that the screener’s face always stays behind the barrier.

Tribes and TDHEs should consider implementing screened testing of workers in all workplaces, but particularly those that fall under the following categories:

- Workplaces at increased risk of the introduction of COVID-19 (e.g., places where workers are in close contact with the public, such as restaurants or salons, or workplaces in communities with moderate to high COVID-19 transmission);
- Workplaces where there is a higher risk of COVID-19 transmission (e.g., places where physical distancing is difficult and workers might be in close contact, such as manufacturing or food processing plants, or workplaces that provide congregate housing

for employees, such as fishing vessels, offshore oil platforms, farmworker housing, or wildland firefighter camps); and

- Workplaces where COVID-19 infection among employees will lead to a greater negative impact, such as:
  - Workplaces in remote settings where medical evaluation or treatment may be delayed,
  - Workplaces where continuity of operations is a high priority (e.g., critical infrastructure sectors), and
  - Workplaces with a high proportion of employees at increased risk of severe illness.

Tribes and TDHEs can decide on the frequency with which they conduct screened testing. They might consider testing all workers before entering the workplace, testing the workers at regular intervals throughout the day, conducting targeted testing of new workers or those returning from a prolonged absence, or some combination of approaches. Given the incubation period for COVID-19, CDC recommends conducting screened testing at least weekly.

Diagnostic testing is intended to identify current infections in individuals and is performed when a person has signs or symptoms consistent with COVID-19, or when a person is asymptomatic but has recent known or suspected exposure to COVID-19.

## **VI. Future considerations for housing management**

Even though the COVID-19 pandemic is slowly coming to an end, Tribes and TDHEs can consider other actions that will allow them to adapt more quickly if another emergency or pandemic arises in the future.

### ***a. Time off and flexible work policies***

Tribes and TDHEs are encouraged to revise their telework and time off policies. Time off policies can be revised to implement flexible sick leave policies and practices that are not punitive and enable staff to stay home when they are sick, have been exposed to someone with COVID-19, or must stay home with children if schools or childcare centers are closed. This may require examining and revising policies for time off, telework and compensation. Tribes and TDHEs should make sure that all relevant policies are communicated to staff.

To better adapt to the COVID-19 pandemic, and prepare for future emergencies, Tribes and TDHEs are encouraged to consider ways that they can significantly reduce the number of employees at work at once. This may include using limited, staggered, or rotating shifts. Using flexible worksites (e.g., telework) and flexible work hours can help prevent exposure to COVID-19. Staggering attendance times or offering expanded hours of operation with limited attendance can help minimize the number of attendees at a venue.



Tribes and TDHEs can also implement flexible work schedules (“FWS”) to maintain the productivity, health, and safety of the workforce. FWS may consist of designating workdays with core hours (specific times when all employees must be working) and flexible hours (times when employees can choose the times they work). Allowing employees to complete their biweekly basic work requirements (e.g., 80 hours per two week period) by determining their own schedule within the limits set by the Tribe or TDHE. When combined with telework FWS can provide Tribes with the flexibility to maintain safe social distancing between employees in the workplace by reducing the percentage of employees who are in the office at a given time. FWS can also assist employees in balancing work duties with caregiving and other responsibilities.

### ***b. Planning for Returning to Work***

As the number of people who are vaccinated increases, employers are considering returning to the workplace. Workplace strategies to implement immediately include practicing physical distancing, (e.g., moving desks apart and removing chairs, adding barriers, enhancing cleaning and safety measures), and allowing individuals to continue to work remotely if they choose.

Workplace strategies that Tribes and TDHEs can implement in the near future could include creating new layouts in the space to help physical distancing, such as adding new elements to workstations and adding glass barriers. Using bleach-cleanable fabrics will help improve clean workspaces. The workspace will likely need to provide more and better options for videoconferencing. Many Tribes may continue to support working remotely as a strategy to reduce density in the workplace.

Tribes and TDHEs can also consider longer term strategies. These strategies should be driven by the need for adaptability instead of permanent, unchanging policies. People now have a whole new appreciation for being together and will want to feel a renewed sense of community. Tribes/TDHEs that try to return to the way things were before COVID-19 will probably struggle. The workplace needs to be ready to rapidly respond to the next disruption.

ONAP will be holding a number of additional webinars in the future to address other housing needs. Visit the [HUD ONAP Codetalk website](#) to find out more information. These include webinars on the following:

- Managing the housing department or TDHE, including the development or revision of policies and procedures, developing an emergency plan, staffing, re-certifications, inspections, and rent collections.
- Addressing family and individual needs, including providing food and hygiene items, and education support for youth such as internet and computers.
- Accounting and environmental issues related to documenting expenditures.
- Best practices.