



215 SW Washington Street, Suite 200
Portland, OR 97204

T 503.242.1745
F 503.242.1072

HOBBSSTRAUS.COM

MEMORANDUM

June 21, 2021

TO: TRIBAL HOUSING CLIENTS

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

RE: ***HUD Call on CDC Eviction Moratorium: Resources to Support Renters***

This memo reports on a webinar hosted by the U.S. Department of Housing and Urban Development (“HUD”) Office of Native American Programs (“ONAP”) on June 17, 2021. The webinar provides an overview of the U.S. Centers for Disease Control and Prevention (“CDC”) Eviction Moratorium (“Moratorium”) that is set to expire on June 30, 2021. HUD also reviewed available resources to assist families that are behind on rent or facing eviction so that Tribes have tools to share with families that are reaching out to them for assistance. The call has been recorded and will be uploaded to the ONAP Codetalk website located [here](#). This memo provides a summary of the call and the comments raised by participants.

I. HUD Presentation

Heidi Frechette, ONAP Deputy Assistant Secretary, and Jad Atallah, Director of ONAP’s Performance and Planning, each gave opening remarks. Also on the call were Denise DeVaan, with the U.S. Consumer Financial Protection Bureau (“CFPB”), and Ama Tuato’o, Executive Director of the Muckleshoot Housing Authority. Additionally, Scott Crain, Statewide Advocacy Counsel, Northwest Justice Project, joined the call to share how legal services can assist families that may be facing eviction.

a. Overview of Eviction Moratorium

On September 4, 2020, the CDC published an Eviction Moratorium Order in response to the COVID-19 pandemic. The Moratorium prohibits all private and public landlords and property owners from evicting individuals from residential properties for failure to make rental or housing payments, so long as the tenant submits a declaration to the landlord. The eviction Moratorium was originally set to expire on December 31, 2020, but the CDC extended it through June 30, 2021.

The CDC ordered the Moratorium to reduce the spread of COVID-19, noting that evictions often result in homelessness and overcrowding in other homes and homeless shelters, which facilitate the spread of COVID-19. The Moratorium protects rental tenants who fall under the definition of a “covered person”: a tenant, lessee, or other resident of residential property who provides the landlord or other owner of the property a declaration, under the penalty of perjury, that:

- The individual has used best efforts to obtain all available government assistances for rent or housing;
- The individual will earn no more than \$99,000 (\$198,000 if filing a joint return) in 2020;
- The individual is unable to pay the full rent or make the housing payment due to a substantial loss of income, loss of hours, lay-off, or “extraordinary” out-of-pocket medical expenses;
- The individual is making best efforts to make timely partial payments; and
- Eviction would likely render the individual homeless or force them to move into an overcrowded living situation.

Individuals may still be evicted for reasons other than not paying rent or making a housing payment (e.g., other lease violations, criminal activity, nuisance, drug-related activity, threatening the health and safety of other residents, damaging property, and violations of public health codes or ordinances). Additionally, the Moratorium does not remove the obligation to pay rent—all rent or housing payments, fees, penalties, and interests may have continued to accrue since September 4, 2020. The Moratorium contains no provisions encouraging or requiring renters to enter into repayment plans. Renters who defer payments will be faced with paying the accrued charges when the moratorium lifts, with no plan in place to protect them from having to pay the accrued charges and interest all at once.

Mr. Atallah remarked that HUD does not know the status of whether the Moratorium will be extended again. He noted that the Moratorium will expire eventually, regardless. Once it does, many tenants will be in need of assistance to avoid evictions. There are many resources available to provide such assistance.

HUD has a new CDC Eviction Moratorium web page for resources, located [here](#). Additionally, ONAP has created a CDC Eviction Moratorium Flyer for Tribes and TDHEs, located [here](#).

b. Eviction Prevention Resources

Mr. Atallah noted that a recent CFPB report found that over 11 million families are behind on their rent or mortgage payments. Over 2.1 million are behind on their mortgage (at least three (3) months), and 8.8 million families are behind on rent. While the CDC Moratorium currently expires on June 30, 2021, states or Tribes may have additional protections in place that would

extend their own eviction moratoriums or provide additional relief. Mr. Atallah encouraged Tribes and TDHEs to check with their state commerce or housing finance agency to find out if they have provided additional eviction protections. Eviction Lab, a program at Princeton University, is tracing additional eviction protections for each state on their webpage, which can found [here](#).

Mr. Crain commented on the importance of connecting low-income tenants with legal services. Law Help, a nonprofit organization, provides a number of self-help resources on their website at www.lawhelp.org. The website also provides information on resources within each state and dozens of resources that provide information on state eviction laws.

Tenants can also find legal help through the Legal Services Corporation (“LSC”), a grant-funded nonprofit that provides legal services to low-income tenants who are under 200 percent (200%) of the federal poverty level (around \$50,000 for a four-person household). If families want to obtain legal services, LSC will direct them to an attorney in their state. Tribes and TDHEs wishing to help connect low-income tenants to legal services should find out in what state they live and then connect them with the state legal aid program. Additional information can be found on the Legal Services website, located at <https://www.lsc.gov/>.

For most legal aid programs, there may be immigration eligibility requirements—legal programs generally cannot provide services to undocumented individuals. Many programs may have dedicated resources for Native American communities through special grants from LSC to the local Native American legal aid association.

Mr. Crain remarked that rental assistance is the main driver of successful resolutions of tenants being in danger of being evicted. Most evictions are for nonpayment of rent. The U.S. Department of Treasury (“Treasury”) has received funding through various COVID-19 relief legislation to support renters but has distributed it to the states and Tribes. Mr. Crain recommended that Tribes and TDHEs encourage their rental tenants to look for state rental assistance, in addition to the assistance available from the Tribe. Information on each state’s rental assistance has been gathered and is available on the National Low Income Housing Coalition (“NLIHC”) website, located [here](#).

One participant asked whether a housing authority that has filed in court for eviction of a tenant should provide contact information to the tenant for legal aid. Mr. Crain responded that everyone does better if each side has legal representation and he recommended that housing authorities connect renters to legal aid services. He noted that LSC has a great relationship with a number of housing authorities, as each wants the best for their tenants.

c. Consumer Financial Protection Bureau

Ms. DeVaan then shared information on eviction protection resources for both renters and housing authorities. The CFPB website, located [here](#), is designed to be a housing hub with resources for both renters and homeowners. The website features a number of videos to help housing authorities and individual renters. There are also credit counselors available to assist

renters and advise them on how to manage their money and debts. The CFPB also has a fraud-reporting platform through which renters and homeowners can report instances of credit and housing scams and fraud.

The CFPB website contains information on eviction protections and provides resources for renters to use to catch up on overdue rent. One of these resources is a spending tracker to help renters budget for paying back overdue rent and saving up for future rent. The website provides information on renters' rights, including on debt collection rights and the Federal Fair Debt Collection Practices Act, rights specific to active duty service members which may have more rights, and information on housing discrimination and protections for victims of domestic violence.

d. Federal Resources

Mr. Atallah provided information on a number of federal resources available to renters to assist them in avoiding eviction.

i. IHBG-CARES & ICDBG-CARES

The March 2020 CARES Act provided supplemental IHBG and ICDBG funding to tribes and TDHEs: \$200 million for IHBG; \$100 million for ICDBG. Both the IHBG-CARES and ICDBG-CARES programs can be used to help support families economically impacted by COVID-19.

Mr. Atallah commented that approximately fifty-five percent (55%) of the IHBG-CARES funding is expended, so there is still funding available for Tribes to use. Tribes can adjust their Indian Housing Plans ("IHPs") to cover new activities and utilize the funding still remaining. He encouraged Tribes to reach out to ONAP to figure out how Tribes can use the funding still available.

Mr. Atallah stated that approximately forty percent (40%) of the ICDBG-CARES funding has now been expended. While there is therefore funding still available, these funds are already budgeted and so there is less flexibility for Tribes to access it. The ICDBG-CARES funds are not subject to the fifteen percent (15%) cap on public services that normally applies to regular ICDBG grant funds.

ii. ERA Program

Another source of federal funding to assist renters is available through the Emergency Rental Assistance Program ("ERA Program"). The ERA Program was created as part of the Consolidated Appropriations Act of 2021 to assist households unable to pay rent or utilities due to COVID-19. Tribes and TDHE received \$800 million, which was allocated to Tribes based on HUD's IHBG formula. The ERA Program itself is overseen by the U.S. Department of Treasury ("Treasury").

Tribes' ERA Program funds generally expire on September 30, 2022. However, Tribes must obligate sixty-five percent (65%) of their allocated funding by September 30, 2021. Treasury may reallocate any funds not obligated by that deadline to those grantees who have obligated 65% by that deadline. Additionally, at least ninety percent (90%) of ERA funds must be used for direct financial assistance: rent, rental arrears, utilities and home energy costs, utilities and home energy costs arrears, and other expenses related to housing. The remaining ten percent (10%) of funds is available for administrative costs and housing stability services.

NLIHC's website, found [here](#), tracks rental assistance programs in each region. For additional information on the ERA Program, the Treasury FAQs are provided [here](#).

iii. IHBG-ARPA & ICDBG-ARPA

The March 2021 American Rescue Plan Act ("ARPA") provided \$450 million for the IHBG program ("IHBG-ARPA"), \$280 million for the ICDBG program ("ICDBG-ARPA"), and \$5 million for the Native Hawaiian Housing Block Grant program ("NHHBG-ARPA"). Additional information on the HUD programs funded through the ARPA can be found on the HUD-ONAP website and [here](#). Mr. Atallah noted that HUD has received less abbreviated IHPs from Tribes than it has for the ICDBG-CARES funding. He encouraged Tribes to submit IHPs to obtain the ICDBG-ARPA funding. This funding can be used for the same activities as ICDBG-CARES funding.

iv. HAF Program

A second ARPA provision providing funding for Indian housing programs is a \$500 million set-aside for a Homeowner Assistance Fund Program ("HAF") (out of approximately \$9.9 billion nationwide). The HAF Program will provide mortgage assistance to homeowners to prevent foreclosure or post-foreclosure eviction of a homeowner due to the COVID-19 pandemic. The HAF Program will be operated in a manner similar to Treasury's ERA Program, but it will be focused on homeowners in economic distress at risk of losing their homes. However, unlike the ERA Program, the HAF Program does provide for use of the higher of either the local or national AMI.

Tribes or TDHEs who want to receive this funding must submit a Notice of Request for HAF funding. A copy of that form 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 also requires 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 ten percent (10%) of the allocated HAF funds. In order to receive the remaining ninety percent (90%) of HAF funds, the Tribe or TDHE must submit a plan for its use of the HAF funds.

e. Muckleshoot Housing Authority

Ama Tuato'o, Executive Director of the Muckleshoot Housing Authority ("MHA"), then discussed the Muckleshoot ERA Program. She noted that MHA began their program in late March of this year. Their service area is King and Pierce Counties in Washington State. Currently the MHA ERA Program is only open to Muckleshoot members. MHA will review the available funding in July and may at that time open the program to non-Tribal members.

MHA has hired two new staff to provide case management for the ERA Program, who work directly with the homeless population. Executive Director Tuato'o noted that it would be useful if Treasury increased the ten percent (10%) administrative cap, as Tribes need more funding to cover the administrative costs so that they can hire the staff necessary to carry out the program. MHA currently has thirty (30) homeless individuals that MHA has placed in hotels and is helping them with obtaining jobs and rental assistance. MHA is also providing them with variety of other services, including: victim services, behavioral help, gambling support, child support, help with pharmacy services, legal aid, and filing taxes. Executive Director Tuato'o noted the importance of providing these extra services, as providing rental assistance alone is not enough to help the homeless individuals get back on their feet.

MHA is also trying to build more relationships with landlords so that landlords are more willing to work with MHA to keep the renters as tenants. MHA is building relationships with service providers to enable them to provide more wrap-around services to help with all of the other needs that the homeless and low-income families are facing.

II. Comments from Participants

ONAP then opened up the call to participants to ask questions and provide feedback on the participants. Questions are noted below, with responses by ONAP staff or Executive Director Tuato'o noted below.

- Will MHA will be providing ERA Program assistance to non-Muckleshoot Tribal members?
 - *Executive Director Tuato'o*: MHA is first providing services to Muckleshoot Tribal members. Then, if funding is still available after serving Muckleshoot Tribal members, MHA is will serve Native Americans. After other Native Americans are served, MHA would then consider providing assistance to non-Indian community members. Executive Director Tuato'o noted that under the ERA Program, funds can be used to assist low-income individuals across the board, both Tribal and non-tribal.
 - *Mr. Atallah*: Under Treasury's rules, Tribes can provide assistance to non-Tribal members living in their community.
- What type of application is MHA using?

- *Executive Director Tuato'o*: They are using an online application, but this is difficult as many homeless individuals do not have resources to apply online. To overcome this, MHA staff has visited the hotel where the homeless individuals are staying to help them with the application.
- Can TDHEs provide assistance for delinquent rent that was incurred prior March 1, 2020?
 - *Executive Director Tuato'o*: No, as long as the delinquent rent was incurred before March 13, 2020, TDHEs cannot use ERA program funds to cover that rent. The Treasury FAQs provide information on what can and cannot be covered under the program. Executive Director Tuato'o also noted that Treasury is quick to respond if Tribes email them with questions.
- Do renters need to reapply for additional months of aid?
 - *Executive Director Tuato'o*: Yes, for each three (3) months of prospective rent, they must reapply.
- What sort of fees can ERA Program funds be used to cover?
 - *Executive Director Tuato'o*: Fees that landlords want to charge when applying for housing are covered under the ERA Program.
- Can the timeline for applying for the ERA Program be extended for those Tribes that did not apply initially?
 - *Executive Director Tuato'o*: No, the application window for any Tribes to apply has closed.
 - *Mr. Atallah*: There is a provision in the ERA statute that states that sixty-five percent (65%) of money must be obligated by September of this year. That has not been extended. Tribes should be focused on getting their ERA Program moving and obligating the money by September.
- What does it mean to have funds obligated?
 - *Mr. Atallah*: That question is best directed to Treasury. For HUD, obligating funds means that if Tribes entered into a contract to spend the funds, then they are obligated to spend those funds. That is likely what Treasury is looking for as well. However, it is best to email Treasury to ask this question directly, as Treasury has not released guidance on how the sixty-five percent (65%) expenditure requirement will work.
 - *Executive Director Tuato'o*: If you hired new staff for the program, their salary will count towards the sixty-five percent (65%) expenditure requirement, as long as your administrative expenses are under ten percent (10%) of the ERA Program funds that the Tribe receives.

- In terms of Treasury's guidance with respect to the reallocation, what does that mean? Does that mean that Tribes that did not obligate sixty-five percent (65%) of their funds would have the un-spent funds recaptured by Treasury and disbursed to other Tribes?
 - *Executive Director Tuato'o*: If Tribes do not obligate sixty-five percent (65%) by September 30, the funding not already obligated will likely be allocated to other Tribes.
- If Tribes that have their funds reallocated, could they get back into line to receive those reallocated funds?
 - *Mr. Atallah*: The governing statute reads that the recaptured funds will be allocated to Tribes who have met the sixty-five percent (65%) allocation requirements. However, Treasury has not provided guidance, so it is not certain how the reallocation will work.
- Can ERA Program funds be used to assist families who are being evicted if the landlord is ending a month-to-month lease because landlords change who they want in the apartment or they sell the apartment?
 - *Executive Director Tuato'o*: Yes, the ERA funds can be used to cover that.
- Is there any help available for homebuyers and home owners?
 - *Mr. Atallah*: IHBG-CARES is one funding source that can be used to provide assistance to homeowners. Homeowners generally have to be low income to receive IHBG-CARES funding. For Treasury programs, homeowners can receive assistance under the HAF program discussed earlier. This program is modeled on the ERA Program.

If any Tribes are interested in sharing information on their ERA Program with others, they can submit an email to NLIHC at research@nlihc.org, which will post the information on their website, located [here](#).

Conclusion

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