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MEMORANDUM

September 3, 2021

TO: TRIBAL HOUSING CLIENTS

FROM: Edmund C. Goodman

 HOBBS, STRAUS, DEAN & WALKER, LLP

RE: *Housing and COVID-19 Update*

This memo provides an update on COVID-19 housing-related issues, and includes a synthesis of information presented during a Native American Indian Housing Council (NAIHC) Legislative Forum, a National Low Income Housing Coalition (NLIHC) call, and other recent publications.

I. NAIHC Legislative Committee Meeting

a. Congressional Updates: 117th Congress Fiscal Year 2022 Appropriations and the President's 2022 Budget

Congress is continuing its work on the Fiscal Year (FY) 2022 Appropriations process. The Biden Administration released its proposed FY 2022 budget on May 28th, 2021. The HUD component of the budget contains proposed funding levels for Indian housing. Overall, the budget requests \$1 billion (\$1,000,000,000) for Indian housing programs, over \$175 million (\$175,000,000) more than the amounts appropriated for FY 2021. Below is a breakdown of the proposed amounts compared to prior years.

Programs	FY 2020	FY 2021	FY 2022 Budget Request	NAIHC Recommendation
Indian Housing Block Grants (IHBG)	\$646 million	\$647 million	\$723 million	\$966 million, at least \$755 million
Competitive IHBG	\$100 million	\$100 million	\$100 million	
Climate Initiative			\$100 million	
Training and Technical Assistance Grants	\$7 million	\$7 million	\$7 million	\$7 million
Indian Community Development Block Grant (ICDBG)	\$70 million	\$70 million	\$70 million	\$100 million
Title VI Loan Guarantee	\$2 million	\$1 million	\$0 **	\$2 million
Section 184 Loan Guarantee	\$1.6 million	\$2 million	\$3.5 million	\$10 million

Native Hawaiian Housing Block Grant (NHHBG)	\$2 million	\$2 million	\$7 million	\$20 million
Tribal HUD Veterans Affairs Supportive Housing (HUD-VASH)	\$1 million	\$5 million	\$5 million	\$7 million
Housing Improvement Program (HIP)	\$11.7 million	\$11.7 million	\$11.7 million	\$23 million
USDA Rural Development 502 Single Family Direct Loan	\$1 billion *general, not Tribal specific	\$1 billion * general, not Tribal specific	\$1 billion * general, not Tribal specific	\$1 billion (general) with Tribal set-aside

(** HUD indicates that existing program funds are sufficient to carry out these activities)

On July 31, 2021, the House passed its appropriations package proposing \$950 million (\$950,000,000) for tribal housing, which includes: \$722 million (\$722,000,000) for IHBG formula grants; \$150 million (\$150,000,000) for IHBG competitive grants; \$70 million (\$70,000,000) for ICDBG grants; \$7 million (\$7,000,000) for training and technical assistance; and \$1 million (\$1,000,000) for Title VI Loan Guarantees. The Senate is still working on its proposed budget resolution.

In the coming weeks, NAIHC will be sending out requests for letters from tribes on any feedback or concerns about the proposed budget. Mr. Walters encouraged tribes to email them about any specific issues they would like addressed.

The bipartisan infrastructure bill that is currently moving through the Senate does not include any funding for housing, tribal or otherwise. Mr. Walters commented that any proposed provisions that are not included in the final bill will likely be included in the budget reconciliation, which is a process by which Congress can pass bills without having to meet the Senate's 60 vote supermajority (required to end filibusters). The House Committee on Financial Services draft included \$2 billion (\$2,000,000,000) for IHBG, and NAIHC is hopeful that the House will include this amount in the budget reconciliation. The Biden Administration's original proposal included \$650 million (\$650,000,000) for IHBG, \$350 million (\$350,000,000) for ICDBG, and \$1 billion (\$1,000,000,000) for IHBG competitive. Congress is close to settling on what the actual high-level budget amounts will be. The subcommittees will then determine how those amounts are allocated to sub-programs.

One participant commented the next two weeks are a critical time for tribes to advocate for funding for tribal housing programs. Most of the larger reconciliation package will be marked up by September 13, 2021, and it is critical that tribes reach out to their congressmembers to highlight the importance of tribal housing programs.

b. Update on Other Tribal Housing Bills

The Senate Committee on Indian Affairs ("Committee on Indian Affairs") is still focusing on the reauthorization of NAHASDA. The NAHASDA reauthorization bill (S.

2264) has nine (9) bipartisan cosponsors: Senators Brian Schatz (D-HI), Lisa Murkowski (R-AK), John Tester (D-MT), John Hoeven (R-ND), Tina Smith (D-MN), Catherine Cortez Masto (D-NV), Ben Ray Lujan (D-NM), Mike Rounds (R-SD), and Elizabeth Warren (D-MA). The cosponsors are trying to move the NAHASDA reauthorization bill out of committee and onto the Senate floor for consideration. Key provisions of the Senate version of the bill include:

- Authorization of NAHASDA programs through 2032;
- Creating an Assistant Secretary for Indian Housing at HUD;
- Re-establishing a Drug Elimination Program for tribal communities;
- Consolidating the environmental review requirements for housing;
- Recognizing tribal sovereignty to govern maximum rent requirements;
- Allowing tribal housing programs to access the Indian Health Service sanitation funding;
- Making tribes eligible for HUD housing counseling grants;
- HUD-VASH provisions; and
- Leveraging/using NAHASDA funding as a match for other federal grants.

Mr. Walters noted the House still has not released its version of a NAHASDA reauthorization bill but has released a discussion draft. The discussion draft is similar to the House's NAHASDA draft bills released in past years. NAIHC continues to look for Representatives to sponsor the bill. The draft bill includes the following key provisions:

- Creating an Assistant Secretary for Indian Housing at HUD;
- TDC allowances for energy efficiency upgrades;
- Five percent (5%) tribal set-aside for USDA programs;
- Making tribes eligible for HUD housing counseling grants;
- HUD-VASH provisions;
- Exemption from the Flood Insurance Program; and
- Providing for tribal court jurisdiction over Section 184 loan foreclosures.

However, the House bill also contains some concerning provisions. First, it contains language that targets the five tribes ("Five Tribes") in Oklahoma (Cherokee Nation, Seminole Nation, Muscogee Nation, Chickasaw Nation, and Choctaw Nation), withholding NAHASDA funding from the Five Tribes unless they providing housing assistance to Freedman descendants. Mr. Walters commented that NAIHC does not support this provision and is working with the House to remove it.

An additional concern is that the House version of the NAHASDA reauthorization bill contains a funding authorization component that sets appropriations at \$680 million (\$680,000,000) for FY 2022. That amount is lower than what the Biden Administration included in its budget proposal, and is of general concern because it could set what becomes perceived as a hard cap in subsequent appropriations cycles. In the coming weeks, NAIHC will send out a letter requesting tribes to reach out to their

congressmembers on the House bill, especially to comment on the provision targeting the tribes.

Mr. Walters further remarked that the members of the House Committee on Financial Services do not have much experience with tribes. They need more education on the critical need for tribal housing programs, so Mr. Walters encouraged tribes to reach out to them to advocate for tribal housing.

Because the NAHASDA bill is too small (in the larger scheme of legislative activity) to be passed as a standalone measure, it will likely be passed as part of a larger bill. The NAHASDA bill is currently included in the American Housing and Economic Mobility Act (S.1368, HR. 2768). This bill includes a provision that reauthorizes NAHASDA for ten (10) years through 2031 and provides \$2.5 billion (\$2,500,000,000) in funding for NAHASDA in the first year. The bill would also allow tribes to access the HUD Section 8 housing vouchers, which provide additional housing assistance to eligible families. Tribes are not currently eligible to access Section 8 housing vouchers. Mr. Walters remarked that because the Section 8 Housing Voucher Program is a very high budget item for HUD, including tribes in the program would not be a burden on HUD but would be a substantial help for tribes. NAIHC is therefore continuing to advocate that Congress remove any restrictions that keep tribes from participating in various HUD programs such as the Section 8 Voucher Assistance. This bill, however, has only Democratic co-sponsors and is not likely to pass.

One participant asked what the differences are between the Senate and House versions of the bill concerning the HUD requirements that housing counseling (as required by or provided in connection with HUD programs) could only be provided by HUD-certified housing counselors working for a participating agency. Mr. Walters responded that the House bill simply opens up the housing counseling to tribes. It does not address the issue that tribes are currently not eligible to be certified for providing housing counseling. NAIHC is continuing its efforts to exempt tribes from these rules. The participant added that the housing counseling requirements are inconsistent with tribal self-determination and she encouraged tribes to push back on these requirements. Mr. Walters responded that until NAHASDA funding is increased to a level sufficient to adequately support tribal housing, tribes are obligated to obtain funding from other sources. As a result, tribes end up facing requirements for those funding sources that are burdensome and would not otherwise apply to tribes.

Mr. Walters commented that NAIHC has draft letters it will publish on its website that tribes may send to their congressmembers to advocate for the passage of NAHASDA. One participant commented that United Native American Housing Association is advocating for the NAHASDA bill to include \$2 billion (\$2,000,000,000) per year for the next ten years NAHASDA is authorized, rather than just limiting the funding to one year.

There has been little progress on the Tribal HUD-VASH program since our last update, although the Tribal HUD-VASH is included in both the Senate and House

NAHASDA reauthorization bills. The Tribal HUD-VASH would provide assistance and supportive services to Native American veterans who are homeless or at risk of homelessness. The Tribal HUD-VASH bill would codify and make permanent the Tribal HUD-VASH program within the larger HUD-VASH program and ensure adequate funding for the program. The bill would also make all tribal nations and their tribal housing programs eligible for the HUD-VASH program.

The Native American Rural Homeownership Improvement Act (S. 2092) is a bipartisan bill being co-sponsored by six Senators. It would provide \$50 million (\$50,000,000) from the USDA single family home loan program to Native Community Development Financial Institutions to provide home loans in tribal communities. It is based on the success of the USDA 502 pilot program and would expand that program to be accessible to tribes across the country. Mr. Walters commented that, if passed, the funding would increase the amount of loan funding for tribal communities.

One participant commented that she is looking for a Democratic sponsor in House to support the Native American Rural Homeownership Improvement Act. She is considering reaching out to Teresa Leger Fernandez (D-NM). The participant asked for any tribe in New Mexico to contact her if they are familiar with Representative Leger Fernandez.

c. Emergency Rental Assistance Program

As we have noted in our prior memorandums, on December 27, 2020, as part of the Consolidated Appropriations Act, 2021 (the “Act”)(Pub. L. No. 116-260, Division N § 501, Dec. 27, 2020), Congress passed, and the President signed, an updated COVID-19 relief package that included \$25 billion (\$25,000,000,000) for the Emergency Rental Assistance program (“ERA Program”). Tribes received an \$800 million (\$800,000,000) set-aside from this fund to assist eligible households who are facing eviction due to unpaid rents and utilities, or the inability to pay prospective rents and utilities. While the allocation of tribal funding was determined by the annual IHBG formula operated by HUD, the ERA Program itself is overseen by the U.S. Department of Treasury (“Treasury”).

Mr. Walters commented that the national ERA Program funding expenditure is low. However, the national data on the amount expended does not currently include tribal data. NAIHC is working with Treasury to have data on tribal expenditures released as soon as possible. NAIHC is also partnering with Treasury to advocate for Congress to extend the eligibility period for the ERA Program so tenants can continue to receive assistance as the COVID-19 pandemic continues.

One participant asked whether tribes now have until September 30, 2022 to spend the funds. Mr. Walters responded that the American Rescue Plan Act of 2021 (“ARP Act”) (Pub L. No. 117-2 (March 11, 2021)) extended the deadline by which grantees must expend ERA Program funds to September 30, 2022.

Participants on the call then discussed the statutory ERA Program provision regarding Treasury's authorization to recapture "excess" funds. The provision directs Treasury by September 30, 2021 to recapture excess funds not obligated by a grantee and reallocate those funds to ERA Program grantees that have obligated sixty-five percent (65%) of their funding. The provision authorizes Treasury to determine what funds are deemed to be "excess." Mr. Walters remarked that this does not necessarily mean the Secretary will recapture funds from any tribe that has not obligated sixty-five percent (65%) by September 30, 2021. Treasury informally indicated that the Secretary intends to exercise her discretion to not recapture funds from tribes right away. However, Treasury has still not released any formal guidance on how it will define "excess funds" or what its plans are regarding recapturing funds. We are drafting a request to Treasury to clarify what its plan is to recapture funds after September 30, 2021. We will also be sending a request to Congress to provide more flexibility to tribes in obligating funds. ***While tribes do not need to spend sixty-five percent (65%) of their funding by September 30, 2021, we strongly advise our clients to attempt to obligate as much of their ERA Program funds as they can by September 30, 2021. We advise tribes not to count on Treasury exercising its discretion regarding that deadline, particularly given the political landscape could change significantly in the coming weeks as Congress continues its work on the FY 2022 appropriations.***

One participant commented that tribes could benefit from receiving any information that states are currently receiving regarding the expenditure and obligation of ERA Program funds. She noted that many tribes are concerned about meeting the sixty-five percent (65%) obligation period.

Another participant commented that Treasury sent their Tribe an addendum to the ERA Program contract, extending the expenditure deadline to September 30, 2022. The participant asked whether that extension means that Treasury cannot recapture funds from the tribe. Mr. Walters responded that NAIHC has not heard from Treasury what the extension in an addendum means but he will reach out to Treasury for more information.

Mr. Walters commented that NAIHC sent out a survey a few weeks ago to gauge tribal implementation of the ERA Program. Mr. Walters encourages tribes to take the survey now. Responses to the survey will help NAIHC determine when tribes will hit the expenditure deadlines, how they are implementing the ERA Program, and what obstacles they are running into.

d. Treasury's Homeowner Assistance Fund

As we have reported in prior memos, the ARP Act provides approximately \$498 million (\$498,000,000) in funding to tribes for the Homeowner Assistance Fund ("HAF Program"). The HAF Program will provide mortgage assistance to homeowners to prevent the 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 will be focused on homeowners in economic distress at risk of losing their homes.

Funding for the HAF Program will be allocated through the Treasury for distribution. Allocations will be based on the IHBG formula for FY 2021. Tribes or TDHEs that want to receive HAF 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 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 ten 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 Program funds. Treasury recently published the templates for HAF participants to use in developing their HAF plans, which can be found [here](#). Tribes must go to a Treasury portal to submit the completed plan and claim their allocation of HAF Program funds. The portal went live on May 5, 2021 and the portal website link can be found in the portal instruction manual (“Instruction Manual”) issued by Treasury. Treasury is still fixing some early issues with the portal website link, so if you are unable to access the site, check back again in a few days.

One participant commented that because there are so many types of assistance that can be provided under the HAF Program, it would be helpful for tribes to be able to talk with each other about how to best spend the HAF Program funds. Mr. Walters commented that he will help organize a discussion on HAF Program plans.

Another participant asked whether Treasury has indicated its timeline for approving tribal HAF Program plans. She noted that her Tribe had submitted their HAF plan on August 13, 2021 and has not yet heard a response. Mr. Walters commented that NAIHC will share information on the Treasury’s timing as soon as it is provided. He noted that Treasury is currently more focused on the ERA program and has not yet released information on its timing for the review of the HAF Program plans. NAIHC will provide template HAF Program plans on its website for tribes to use to develop their own plans. HUD is also partnering with Treasury to develop training and technical assistance on the HAF Program and will release information on that soon.

e. HUD Programs

The ARP Act provides \$450 million (\$450,000,000) for the IHBG program (IHBG-ARPA), \$280 million (\$280,000,000) for the ICDBG program (ICDBG-ARPA), \$5 million (\$5,000,000) for the Native Hawaiian Housing Block Grant program (NHHBG-ARPA), and \$10 million (\$10,000,000) for related technical assistance

resources. 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 available [here](#). Additional information on the HUD programs funded through the ARP Act can be found on the HUD-ONAP website and [here](#).

ICDBG-ARP grants are available to prevent, prepare for, or respond to COVID-19—the same purpose as the ICDBG funds provided under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, or ICDBG-CARES funds. On July 20, 2021, HUD published an Implementation Notice for the ICDBG-ARP funding, which can be found [here](#). The ICDBG-ARP grants will be awarded in three phases. Under Phase I, HUD will prioritize ICDBG-CARES applications that were not funded due to limited appropriations.

Under Phase II, HUD will begin accepting Phase II, ICDBG-ARP grant applications starting on **September 3, 2021, at 3:00 P.M. EDT**. The application period close date is October 18, 2021, at 6 P.M. EDT. All Phase II applications will be sorted into two tiers:

- **First Tier:** Applications from grantees that did not receive an award under the ICDBG-CARES program and are not listed in the Phase One Priority List (or are listed but failed to apply timely under Phase One).
- **Second Tier:** Applications from grantees that did receive a fully funded award under the ICDBG-CARES program. This does not include grantees that were partially funded under ICDBG-CARES, which are included under Phase One.

Under Phase III, any applications received after the Phase II applications deadline will be considered on a first come, first-served basis. ONAP will be hosting an ICDBG-ARP Implementation Training on August 18, 2021 from 1:00 to 3:00 P.M. EDT.

HUD is on track to release other grants this year as well, but is prioritizing its work on future tribal housing grants in the following order:

- (1) IHBG-ARP and ICDBG-ARP grants;
- (2) ICDBG FY 21 grants (\$76 million), deadline is October 25, 2021; and
- (3) IHBG Competitive FY 21 grants (\$950 million), deadline is December 1, 2021.

HUD has not yet published the Notice of Funding Availability (NOFA) for the ICDBG FY 21 grant.

Funding is also available under the Resident Opportunity and Self-Sufficiency program (ROSS) (\$35 million) (deadline is September 17, 2021); and Continuum of Care Program (\$2.6 billion) (deadline November 6, 2021). Tribes are eligible in FY 21 as

project applicants within existing Continuum of Care networks; eviction protection deadline September 8, 2021.

One participant asked what the status is of the Section 184 revised regulations and whether anyone is aware of foreclosure cases being filed in federal court. Mr. Walters responded that he has not received any updates on either issue. However, he referred to Ms. Frechette's earlier comment that the eviction moratorium is being extended for Section 184 loan foreclosures, noting that we may receive additional information on the Section 184 revised regulations after the moratorium ends.

f. Other Matters

The next NAIHC event will be the annual Legal Symposium, currently scheduled to be held in person on December 6-8, 2021 at the Mirage, Las Vegas, Nevada. The registration is currently open. If NAIHC decides to hold the Symposium virtually due to changes in the COVID-19 pandemic, any registration fees paid will be refunded. The Legal Symposium will include a members meeting. Mr. Walters noted that the legislative committee will start at 4:00 P.M. Pacific time on Monday, December 6, 2021. The full agenda can be found [here](#).

The NAIHC Legislative Committee meetings will continue to be held the first Thursday of each month. Mr. Walters encouraged NAIHC members to contact him if they would like NAIHC to meet more frequently to discuss the ERA Program or HAF Program. The next NAIHC Legislative Committee meetings will be held October 7 and November 4, 2021. Anyone who would like to submit questions prior to the calls may do so through the link provided in the NAIHC email sent out prior to each call. Sending in questions and comments ahead of time allows NAIHC to provide detailed responses during the call. NAIHC will continue to host the calls via a Zoom platform. Mr. Walters encouraged participants to reach out to NAIHC staff with any questions or comments. Participants may do so by sending an email to Twalters@NAIHC.net. NAIHC will be providing the PowerPoint and recording of this call on its website.

NAIHC will continue to provide virtual training and technical assistance. Mr. Walters encouraged NAIHC members to use the virtual trainings and provide feedback. NAIHC sends out a native housing newsletter every two (2) weeks. Mr. Walters recommends that any Tribe who does not currently receive the newsletter to go to the NAIHC website to sign up.

II. NLIHC Call on Preventing Evictions

On August 30, 2021, the NLIHC hosted a call to discuss the Biden Administration's plans to prevent evictions and to better implement the Emergency Rental Assistance Program ("ERA Program"). This memo provides a summary of the call.

Diane Yentel, President and CEO of the National Low-Income Housing Coalition (NLIHC) gave opening remarks. Sarah Saadian, Vice President of NLIHC, gave an overview of current efforts to prevent evictions.

a. Legislative Efforts to Prevent Evictions

As we have discussed in recent memos, on September 4, 2020, the CDC published an Eviction Moratorium Order in response to the COVID-19 pandemic. The Moratorium prohibited 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 several times, most recently to October 3, 2021. However, on August 26, 2021, the Supreme Court issued a per curiam (unsigned) opinion striking down the eviction moratorium on the basis that the CDC exceeded its authority to mandate an eviction moratorium, and that additional Congressional action would be needed for any further extension. You can read the eight-page decision here:

https://www.supremecourt.gov/opinions/20pdf/21a23_ap6c.pdf.

Ms. Saadian remarked that it is very unlikely that Congress will be able to pass legislation on an eviction moratorium, due to opposition by Republicans in the House and Senate. As a result, NLIHC and other housing advocates are working to find other ways to keep low-income tenants stably housed and prevent evictions.

Representative Maxine Waters, Chairwoman of the House Financial Services Committee (D-CA), is currently working on legislation that would require ERA Programs to use self-attestation for determining the eligibility of low-income tenants for participation in the ERA Program. The legislation would also direct Treasury to carry out more outreach to landlords and local programs to encourage efforts to prevent evictions. The House Committee on Financial Services is expected to vote on this housing legislation on September 13, 2021.

Congress continues its efforts to draft the \$3.5 trillion reconciliation plan by September 15, 2021. On Thursday, September 2, 2021, the House Natural Resources Committee will kick off the formal process and is expected to mark up their portion of the reconciliation package. According to a memo released last week, Native American programs will receive \$5.6 billion (\$5,600,000,000) under the committee's proposal.

b. Biden Administration Actions to Prevent Evictions

Speaker of the U.S. House of Representatives Nancy Pelosi (D-CA), Gene Sperling, advisor to President Biden, and Noel Andrés Poyo, Treasury Deputy Assistant Secretary for Community and Economic Development, joined the call to discuss the Biden Administration's efforts to prevent evictions during the COVID-19 pandemic. She noted that the Administration is dedicated to improving housing and preventing low-income tenants from being evicted during the pandemic. Speaker Pelosi also commented

that because of the opposition to the housing bill in the Senate, she and other housing advocates will look for other ways to provide funding for improving existing housing and increasing the stock of affordable housing.

Speaker Pelosi remarked that one of her major goals is to have as much of the population vaccinated against COVID-19 as possible, as this will alleviate some of the health concerns caused by overcrowded housing and evictions. Ms. Yentel commented that some of the issues that are causing continued housing problems include landlords refusing to participate in the ERA Program, raising rent, and finding financial incentives to evict tenants. Another key will be determining what the obstacles are that are preventing ERA Program funding from reaching tenants in need.

Mr. Sperling commented that the Biden Administration and state and local housing programs are racing against time to implement the ERA Program before tenants are evicted due to non-payment of rent. The Administration is encouraging housing programs to work with legal services, the American Bar Association, and other advocates to push courts to implement court eviction diversion policies. Mr. Sperling noted that the goal is to speed up the ERA Program implementation and spending and do everything possible to divert, delay, and prevent rental evictions. Programs must help connect tenants with pro bono legal services and other programs providing assistance for tenants in need. Funding allocated under the ARP Act can help support court diversion plans, navigator plans, legal services, and the right to counsel, among other types of assistance.

On January 19, 2021, Treasury published an initial set of FAQs to serve as guidance for the ERA Program. Treasury has updated the FAQs several times, the most recent being on August 25, 2021. The updated FAQs are available by clicking on the following link:

<https://home.treasury.gov/system/files/136/ERA-FAQ-8-25-2021.pdf>.

Mr. Sperling commented that under the new Treasury guidance, self-attestation can be used in documenting each aspect of a household's eligibility for ERA, including: a) financial hardship, b) the risk of homelessness or housing instability, and c) income. Treasury noted in its guidance that the use of self-attestation for documenting household eligibility speeds up the processing of applications for rental assistance. Treasury therefore is encouraging grantees to simplify application processes to use self-attestation when other forms of documentation are not immediately available. Mr. Sperling also commented that self-attestation can be used in the initial application. In order to facilitate the rapid provision of assistance, Treasury has clarified that grantees may rely solely on a self-attestation of income when applicants are unable to provide other documentation of their income. Mr. Poyo commented that self-attestation does not necessarily lead to fraud, so concern of fraud should not be an excuse to not use self-attestation. The programs and local governments simply need to build the appropriate structures to prevent fraud.

Under the guidance, Grantees may enter into partnership with nonprofits to deliver advance, immediate assistance to households at risk of eviction while their applications are still being processed. Where an expedited payment could reasonably be viewed as necessary to prevent an eviction that may occur under a grantee's standard application process, Treasury is establishing guidelines for state and local programs to engage with non-profit organizations able and willing to take on the financial risk of advancing assistance prior to an application being fully processed to speed aid to at-risk households. Mr. Sperling commented that the non-profits would then have up to six (6) months to help fill the required documentation.

The Act contains a provision stating that the Secretary of Treasury will reallocate any ERA Program funds not expended by September 30, 2021 to those ERA Program grantees that have obligated sixty-five percent (65%) of their funding. Ms. Yentel asked what Treasury's plan is regarding its statutory obligation to recapture and reallocate ERA Program funds. She asked how Treasury plans to recapture funds in a way that protects tenants. Mr. Sperling responded that Treasury's statutory obligation is the one tool in the legislation that allows Treasury to keep housing programs in line and make sure that they are using the funds to help tenants in need. He commented that there are some organizations that are sincere in wanting to implement the ERA Program but have not expended funds in a timely manner because they do not recognize the urgency of the situation. The sixty-five percent (65%) deadline is therefore a leverage that Treasury can use to make sure these programs correctly and urgently expend ERA Program funds.

Mr. Sperling commented that in deciding how to recapture the funds, Treasury will look at not just the amount already expended but will also consider the efforts that programs are making to help tenants in need. If a program is clearly making an effort to help tenants but is running into other obstacles in expending the funding, Treasury will not set out to punish them. Treasury will also not make arbitrary decisions. Mr. Poyo remarked that Treasury will be releasing guidance funding this month on its plans to recapture funding. The goal is to provide the ERA Program funding to those who need. Treasury will not be playing a "gotcha" game intended to punish organizations. Mr. Poyo also commented that programs can expend funds by the September 30, 2021 deadline by using letters of intent to indicate the amount of money that will be paid to the landlords. Mr. Sperling encouraged housing programs to email him with any questions at Eugene.B.Sperling@who.eop.gov.

Conclusion

We will continue to update you on the ERA Program and on any forthcoming eviction moratoriums. If you have any questions, please contact Ed Clay Goodman (egoodman@hobbsstrauss.com or 503-242-1745).