

215 SW Washington Street, Suite 200
Portland, OR 97204


T 503.242.1745
F 503.242.1072

HOBBSSTRAUS.COM

MEMORANDUM

November 12, 2021

TO: TRIBAL HOUSING CLIENTS

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

RE: *Housing and COVID-19 Update*

On November 10, 2021, Native American Indian Housing Council (NAIHC) hosted its first monthly Forum discussion, during which NAIHC provided detailed information and received feedback from tribes and Tribally Designated Housing Entities (TDHEs) on the U.S. Department of Treasury’s (“Treasury”) Emergency Rental Assistance Program (“ERA Program”) and Housing Assistance Fund (HAF) Program. NAIHC Executive Director Tony Walters presided over the meeting. NAIHC also hosted an in-depth training on the HAF Program. This memorandum provides a synthesis of information presented during both calls.

I. NAIHC Monthly Forum

a. *Emergency Rental Assistance Program*

As we have noted in our prior memoranda, 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 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 Indian Housing Block Grant (IHBG) formula operated by the U.S. Department of Housing and Urban Development (HUD), the ERA Program itself is overseen by Treasury.

One of the provisions of the ERA Program legislation states that, beginning on September 30, 2021, Treasury will begin recapturing “excess” funds and reallocating those funds to recipients who have already expended sixty-five percent (65%) or more of their ERA Program funding by that date. The statute does not define “excess” funds, leaving such definition to Treasury. In guidance that Treasury issued on October 4, Treasury stated that it will not

recapture funds from Indian Tribes or Tribally Designated Housing Entities (TDHEs) prior to April 2022 (in order to provide for an opportunity to consult).

Dave Heisterkamp, one of the participants on the call, noted that the reallocation process for states and counties is already underway. Treasury indicated that any funding recaptured through the reallocation process would stay in the state in which it was recaptured. There is a possibility that tribes would receive reallocated funding that has been recaptured from their respective states. In some states, a reallocation to tribes has already begun. Mr. Heisterkamp noted that the State of Wyoming spent less than three percent (3%) of its ERA Program funding. As a result, Wyoming will reallocate some of its funding to some of the tribes in that state. Mr. Heisterkamp recommended that even if tribes should reach out to their respective state housing agencies and to Treasury to discuss reallocated funding, even if the tribes are not anticipating receiving a reallocation. Tribes, states, and local counties could consider partnering together to make sure that ERA Program funding reaches those in need. Another participant stated that the reallocation process has also already begun in Hawaii, and her tribe has already received \$5 million (\$5,000,000) in reallocated funding from the state. Mr. Walters commented that if a tribal member is eligible under a tribal ERA Program, they are also likely eligible under the state ERA Program. If a tribe believes that they may run out of ERA Program funding, directing tribal members to the state ERA Program would be an effective way to expand the way funds reach and help a greater number of tribal members.

Treasury will be holding a Tribal ERA Program Consultation on Thursday, November 18, 2021, from 3:00–5:00 p.m. ET. The Consultation will address Treasury’s proposed methodology for reallocating ERA Program Funds for tribal governments and TDHEs. Tribal comments on the proposed methodology will be due November 30, 2021. Tribes and TDHEs can register [here](#) for the Consultation. Treasury is looking for tribal feedback on the following specific questions for the tribal consultation:

1. What factors should be considered when determining a Tribe's ability to expend funds that should be considered in reallocating funds?
2. What factors and data should be considered when determining the reallocation of funds to high-need, high-performing Tribes and TDHEs?
3. Reallocation for states were based on a minimum expenditure ratio. Are there any mitigating factors that are unique to Tribal governments and TDHEs that should be considered when reviewing the minimum expenditure ratio?
4. Are their circumstances where an increase in technical assistance to Tribes and TDHEs would greatly enhance performance? How would Treasury determine this need?
5. In the state program, states facing a reallocation were able to present a case for mitigating circumstances. What are circumstances likely to be presented by Tribes and TDHEs in requesting a review of potential reallocation?
6. In the state program, efforts were made to keep funds within the same state boundaries. Given the diversity in the geographic and demographic composition of American Indians and Alaska Natives, what would you recommend to Treasury that helps ensure reallocations are fair and equitable?

In August, Treasury released tribal ERA Program data, which was based on the June 30, 2021 reports. As of that date, tribes had spent \$79,778,159 (ten percent (10%)) and obligated

\$186,200,920 (twenty-three and four-tenths percent (23.4%)). The amounts spent and obligated have increased since that date.

Regarding ERA Program best practices, Treasury recommends using self-attestation forms for all ERA Program applicants. Treasury has posted additional pages on its website covering best practices and attestation form samples, which can be found [here](#). Additionally, Mr. Walters recommended sending NAIHC any resources and templates that tribes or TDHEs have developed so that NAIHC can share those resources on its webpage.

The United States Digital Services (USDS) has been helping Treasury to expand their ERA guidance and also has two (2) free ways that they can help grantees directly:

1. USDS can collaborate with grantees who desire assistance with creating or evolving their online or paper applications; and
2. USDS can collaborate with grantees to make use of fact-specific proxies to confidently and quickly assess applicants' income qualifications.

Any tribe or TDHE interested in working with the USDS should contact Alex Ciepley at alexander.j.ciepley@omb.eop.gov.

One participant asked whether there is any opportunity for the ERA Program to be made a permanent program with direct allocations to TDHEs through the IHBG program. Mr. Walters responded that the ERA Program was part of a COVID-19 relief package, so the Program will only continue for a limited duration. It would take an Act of Congress to continue the Program or direct any of its funding through the IHBG program. Mr. Walters noted that the deadline to spend the ERA Program money is September 30, 2022, so Congress may consider extending the Program depending on how COVID-19 is still affecting the economy and housing. However, there has not yet been any discussion on such an extension.

b. Treasury's Homeowner Assistance Fund

As we have reported in prior memos, the American Rescue Plan Act (ARPA) provides approximately \$498 million (\$498,000,000) in funding to tribes for the HAF Program. The HAF Program provides 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 is focused on homeowners in economic distress at risk of losing their homes.

Funding for the HAF Program is allocated through the Treasury for distribution. Allocations are based on the IHBG formula for fiscal year (FY) 2021. There are a few tribes that do not receive IHBG funds, so the allocation would be adjusted to fit what those tribes would receive if they participated in the IHBG program. On September 20, 2021, Treasury published a notice on the Data and Methodology for Allocations to Indian Tribes and TDHEs, which is attached to this memo.

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 [here](#). Treasury recently extended the deadline for Tribes or TDHEs to submit that Notice of Request to **November 15, 2021**. Treasury also requires that the Tribe or TDHE, as a condition of receiving the funds, sign a Financial Assistance Agreement, a copy of which is available [here](#).

Treasury will make initial payments to tribes or TDHEs in the amount of ten percent (10%) of the allocated HAF Program funds. In order to receive the remaining 90 percent (90%) of HAF Program funds, the Tribe or TDHE must submit a plan (“HAF Plan”) for its use of the HAF funds. Treasury recently published the templates for HAF Program participants to use in developing their HAF Plans, which can be found [here](#). Tribes must go to a Treasury portal to submit the completed HAF Plan and claim their allocation of HAF Program funds, and the portal website link can be found in the portal instruction manual issued by Treasury.

One participant asked whether there is a deadline by which the tribes and TDHEs must submit their HAF plans. Mr. Heisterkamp responded that Treasury has not announced a deadline for tribes and TDHEs. Treasury has been clear that the fourteen (14) day deadline for state HAF Plans does not apply to tribes and TDHEs. However, Mr. Heisterkamp recommended that tribes and TDHEs submit their HAF Plans in as soon as possible in order to receive tribal funding, especially given how long it is taking Treasury to process the HAF Plans. Mr. Walters commented that some tribes’ HAF Plans have already been approved by Treasury, and further, that some tribes have already received payment. He noted that banks may have some internal process regarding handling HAF funding, so NAIHC will send out information on those processes if and when NAIHC receives it.

A participant asked whether NAIHC would be willing to host a platform/website for tribes willing to share their HAF plans. Mr. Walters responded that NAIHC has a COVID-19 page that includes some resources, which may include HAF Plans. Additionally, NAIHC will be creating a new webpage to help tribal families determine the programs for which they are eligible. This new page will likely include ERA Program and HAF Program resources.

Another participant asked whether anyone has any best practices regarding coordinating HAF Programs between the tribes and the state in which they are located. A representative from a Hawaii tribe noted that tribal representatives meet on a weekly basis with their state counterparts to discuss both the ERA Program and HAF Program. An Alaska tribal representative commented that they have had success collaborating with the State of Alaska in implementing the ERA Program, which could be used as model for collaboration on the HAF Program. The Alaska State ERA Program built its Program to serve everyone and then tailored the Program to work with tribes and TDHEs. Additionally, if tribal members do not have access to the internet to apply for the HAF Program, they can submit paper applications to the tribes and the tribes then submit those collected applications to the State of Alaska ERA Program. Further, the State of Alaska has shared all of its communications and tools for tribes to use and distribute. Finally, Alaska has also collaborated with tribes and TDHEs by giving them the opportunity to review and help correct tribal members’ ERA Program applications that the State deems to be insufficient.

Another participant shared that in South Dakota, the State's draft HAF Plan submitted to Treasury is much more restrictive in the types of assistance it provides than what Treasury recommends in its guidance. This has made it difficult for the tribes to refer homebuyers to the State HAF Program because some of the types of assistance covered under the Treasury guidance are not available under the South Dakota State HAF Program. Additionally, because the State is concerned about people receiving funds from both tribes and the State, the State has often been denying tribal applications outright and referring those applicants to the tribes. Another participant commented that the State of Hawaii HAF Program is also much more limited than what Treasury recommends in its guidance. An Alaska tribal representative commented that the State and tribes or TDHEs have agreements in place for data sharing to ensure that homebuyers are not receiving duplicative funds for the same expenses.

One participant asked how many tribes are serving tribal members through the HAF Program in just their local area. The participant further asked that, if tribes are serving tribal members in a larger area, how successful they have been in doing so. Mr. Walters responded that there is no data yet on the HAF Program, but for the ERA Program, many tribes are serving their tribal members all across the country, not just those living on the reservation. Mr. Walters commented that he will look into ways to facilitate further conversations between tribes on how they are serving their tribal members.

Another participant suggested that NAIHC should obtain overall questions that each or multiple tribes have on the HAF Program, and combine those questions into a comprehensive list to convey to Treasury. Mr. Walters responded that he will figure out the best way to facilitate that.

c. Future Monthly Forums

Mr. Walters commented that future NAIHC Monthly Forums will generally be held the second Wednesday of each month. The next Forum will be on December 15, 2021 and will cover the HUD Continuum of Care program. The January 12, 2022 Forum will cover HUD Housing Counseling, and the February 9, 2022 Forum will cover one of the Treasury COVID-19 relief housing programs (to be decided). NAIHC is open to other topics as well and is looking for volunteers to help lead the discussions. Tribes and TDHEs can contact NAIHC with any suggestions or questions.

II. HAF Training

NAIHC hosted a HAF Program training on November 10, 2021, to provide an overview of the HAF Program and information on how to submit an application. This two-hour session was led by Dave Heisterkamp and Silvia Wirba.

a. *Overview*

As noted above, the deadline for Tribes or TDHEs to submit the Notice of Request is **November 15, 2021**. Mr. Heisterkamp emphasized that a tribe or TDHE must submit the Notice of Request if they want to receive any HAF funds. He noted that tribes and TDHEs must go through the initial process in the Treasury portal before they can submit their Notice of Request, and this portal process does take some time to complete. Mr. Heisterkamp therefore recommended not waiting until the last minute to open the portal and submit the Notice of Request. The Notice of Request itself is a simple form that is easy to complete.

The HAF Program is not a competitive program, and the funds have already been allocated to the tribes and TDHEs. Any tribe or TDHE that participates in the IHBG program has a place in line. Mr. Heisterkamp also emphasized that Tribes that do not participate in the IHBG program can also participate.

Once a tribe or TDHE submits their Notice of Request and financial agreement, Treasury will make initial payments to tribes or TDHEs in the amount of ten percent (10%) of the allocated HAF Program funds. Payments will be made through the access that tribes and TDHEs list on their Financial Assistance Agreement. Mr. Heisterkamp noted that Treasury is encouraging HAF participants to create or fund pilot programs with that initial ten percent (10%) of funding, which would allow tribes and TDHEs to start helping homeowners immediately. The initial payment can also be used to hire staff to implement the program. Further, half of that initial ten percent (10%) can be used for planning, community engagement, needs assessments, and administrative expenses.

b. *Eligible Homeowners*

Homeowners are eligible for assistance under the HAF Program if they meet the following criteria:

1. **Income.** If they have an income equal to or less than 150% of the area median income or 100% of the median income for the United States, whichever is greater. HUD has developed a tool that HAF participants can use to determine the income limits for each area, which can be found [here](#).
2. **Financial Hardship.** If they have experienced a financial hardship after January 21, 2020 (including a hardship that began before January 21, 2020, but continued after that date). Treasury guidance defines “Financial hardship” as a material reduction in income or material increase in living expenses associated with the coronavirus pandemic that has created or increased a risk of mortgage delinquency, mortgage default, foreclosure, loss of utilities or home energy services, or displacement for a homeowner. Thus, the financial hardship must be associated with the COVID-19 pandemic and it must also create or increase the risk of housing instability.

The homeowner applicants must attest to the nature of the financial hardship experienced after January 21, 2020 (including a hardship that began before January 21, 2020, but continued after that date). The attestation must describe the nature of the financial hardship (for example, job loss, reduction in income, or increased costs due to healthcare or the need to care for a family member). Treasury will try to format it to cause the least amount of burden for homeowner, and Treasury will allow self-attestations (i.e. a signed statement that the homeowner experienced financial hardship).

HAF funds can only be paid to a homeowner with respect to qualified expenses related to the dwelling that is that homeowner's primary residence. Tribes and TDHEs can provide assistance to tribal members, or individuals otherwise eligible for HAF, who reside outside of the tribal government's geographic jurisdiction. Tribal authorities should confirm that any such assistance to be provided will be consistent with the tribe's constitution and governing law.

c. HAF Allowable Expenses

Tribes and TDHEs can tailor the HAF Program to fit the needs of their specific communities. There are multiple types of allowable expenses, and tribes and TDHEs can decide which ones will best help reduce the risk of housing instability for their communities. Below are some of the allowable expenses under the HAF Program.

- Mortgage payment assistance (Treasury asks tribes and TDHEs to do at least one activity that revolves around mortgage payment assistance);
- Financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing-related costs related to a period of forbearance, delinquency, or default;
- Mortgage principal and interest rate reduction, including with respect to a second mortgage provided by a nonprofit or government entity;
- Payment assistance for:
 - Homeowner's utilities, including electric, gas, home energy (including firewood and home heating oil), water, and wastewater;
 - Homeowner's internet service, including broadband internet access service;
 - Homeowner's insurance, flood insurance, and mortgage insurance;
 - Homeowner's association fees or liens, condominium association fees, or common charges, and similar costs payable under a unit occupancy agreement by a resident member/shareholder in a cooperative housing development; and
 - Down payment assistance loans provided by nonprofit or government entities;
- Payment assistance for delinquent property taxes to prevent homeowner tax foreclosures;
- Measures to prevent homeowner displacement, such as home repairs to maintain the habitability of a home or assistance to enable households to receive clear title to their properties;

- Measures to prevent homeowner displacement, such as home repairs to maintain the habitability of a home, including the reasonable addition of habitable space to alleviate overcrowding, or assistance to enable households to receive clear title to their properties;
- Counseling or educational efforts by housing counseling agencies approved by HUD or a tribal government, or legal services, targeted to households eligible to be served with funding from the HAF Program related to foreclosure prevention or displacement, in an aggregate amount up to five percent (5%) of the funding from the HAF Program received;
- Reimbursement of funds expended by the tribe or TDHE during the period beginning on January 21, 2020, and ending on the date that the first funds are disbursed by the tribe or TDHE under the HAF Program, for a qualified expense; and
- Planning, community engagement, needs assessment, and administrative expenses related to the tribe or TDHE's disbursement of HAF Program Funds for qualified expenses, in an aggregate amount not to exceed fifteen percent (15%) of the funding from the HAF Program received.

Mr. Heisterkamp noted that if a homeowner is already in default on a mortgage, tribes and TDHEs can help them pay any missing mortgage payments and any forbearance fees. Additionally, a number of banks are already indicating their willingness to work with tribes and TDHEs in the HAF Program process. Wells Fargo has already contacted NAIHC. Because Wells Fargo holds significant numbers of mortgages in Indian country, Wells Fargo said it would create and implement a process to specifically deal with HAF Program payments.

Mr. Heisterkamp recommended that tribes and TDHEs reach out to local banks to give them a heads-up on the HAF Program. Tribes and TDHEs should consider identifying banks that might handle mortgages of their tribal members and start the dialog with the banks on how to handle HAF Program assistance and the process by which tribes, as third parties, can make payments on behalf of the homeowners for their mortgages. This will speed up the process of providing HAF Program assistance later.

HAF Program payments can be sent directly to the lenders, utility providers, etc., not the homeowners. Regardless of which types of assistance the tribes and TDHEs plan to provide, they should start to figure out the logistics of how to make third-party payments, where to direct the payments, and what internal processes the lenders or utility providers might have for excepting such third-party payments.

d. HAF Plans

As noted above, Treasury has posted HAF Plan templates on its website, which can be found [here](#). The template outlines eligible uses and some of the planning pieces. Tribes and TDHEs that receive less than \$5 million (\$5,000,000) in HAF funding will have a shorter HAF Plan than those tribes and TDHEs that receive more than \$5 million (\$5,000,000) in HAF funding. The difference mostly involves data requirements.

Tribes and TDHEs can elect to submit a single, comprehensive HAF Plan that describes all intended uses of the funding allocation, or they can submit multiple, partial HAF Plans that each describe only a portion of the intended uses for the participant's allocation. For example, if a tribe initially plans to use the HAF funds for three of the allowable expenses and submits a Plan on those expenses, the tribe can later submit another Plan if they decide to increase the types of expenses for which they will provide assistance. Submission of partial HAF plans may allow tribes to proceed more quickly to implement portions of their programs while conducting the initial planning and community engagement for other planned activities. Tribes and TDHEs may want to consider which types of assistance are the most urgent to cover. For example, covering utility costs as winter approaches might be more urgent than covering home repairs.

Individual activities will be described in the term sheets within the Plans ("Term Sheets"). Treasury has created a sample Term Sheet to show tribes how they expect them to fill the program descriptions in the HAF Plans, which can be found [here](#). These Term Sheets will also help tribes determine how to describe their program goals. The key thing to remember is that all expenses must be related to COVID-19.

A HAF Plan submitted by a tribe whose population consists largely or entirely of socially disadvantaged individuals may be tailored to reflect the limited effort necessary to target its programs for those individuals. Additionally, if information required in the HAF Plan is not available to a tribe, Treasury will accept alternative information regarding the relevant community.

Once the HAF Plan is submitted, Treasury will review the Plan and evaluate based on the Treasury guidance. Treasury may approve a HAF Plan in whole or in part. Additionally, if Treasury identifies weaknesses in any elements of a particular Plan, Treasury will provide training and technical assistance to help. Treasury will not simply deny a Plan outright. Treasury wants to help tribes use this funding and is willing to work with tribes to develop Plans that comply with the statutory requirements. Treasury will also assess the following when reviewing a HAF Plan:

- The extent to which a tribe or TDHE, in the course of its HAF planning process, has relied on quantitative data and community input to inform the design of its HAF Plan;
- The extent to which the programs are responsive to community needs and based on a best practice model or evidence of the HAF participant's effective implementation of a previous program or pilot program;
- The extent to which the performance goals would address the needs of specific eligible populations within targeted communities, in a manner that is appropriate to the jurisdiction;
- The extent to which the HAF participant describes targeting methods reasonably likely to result in HAF assistance being made available to eligible homeowners consistent with the targeting requirements described in the ARP and in applicable guidance issued by Treasury;

- The extent to which the HAF participant demonstrates readiness to implement a program at scale, including having in place policies and procedures for the program and an appropriate mix of staffing, contractors, and partners. Implementation of a pilot program or pre-existing program that successfully targeted resources to the targeted populations will be a strong indication of readiness; and
- The extent to which the funding budgeted by the program reasonably supports the achievement of the performance goals.

e. HAF Plan Details

The HAF Plans require grantees to submit information on five (5) main areas:

1. Homeowner needs and community engagement
2. Program design
3. Performance goals
4. Readiness
5. Budget.

Homeowner needs and community engagement

Tribes must demonstrate that they considered homeowner needs specific to their communities and that the tribes engaged with Tribal Council, other community organizations, and lenders on what the needs are and how best to address them. Treasury will assess which types of data informed the planning, and the extent to which a Plan is based on actual local data. Tribes are recommended to describe whether they talked to mortgage servicers about mortgage needs in that area.

Program design

Treasury has listed eligible expenses under the HAF Program but allows tribes to figure out how to use the funding for the expenses that best fit each tribal community. A tribe should carefully explain what expenses they plan to cover and include documentation to support why the tribe plans to use HAF funding in that way. Tribes should provide information in a term sheet for each type of assistance a tribe plans to provide. As much as possible, it is best to use the language Treasury provided in the term sheets. This will allow Treasury to understand what the tribe plans and will hopefully speed up the Treasury process of approving Plans approval. The Plan will ask tribes to describe how tribes can maximize the number of people they are assisting, how much assistance they plan to provide to each homeowner under each type of eligible expense, and whether funds will be provided in the form of grants, forgivable loans, or other assistance. Tribes have the flexibility to tailor the HAF Program to their communities, but they must describe the methods they will use to make those decisions. When determining homeowner income for purposes of eligibility, Treasury has indicated that they do not want grantees to use any criteria that is too restrictive.

One of the pages of the HAF Plan asks whether the tribe plans to add or remove any design elements at a later date. It is best to select yes for this question to give the tribe flexibility to change its program, even if it does not currently anticipate making any changes.

Performance Goals, Readiness, and Budget

For the Performance Goals section, tribes will need to describe the metrics of success that they will use to determine if the program has met the tribes' goals. For the Readiness section, tribes should describe their current staffing needs, whether they will need to hire new staff, and whether they will need any new technology (e.g. computers) in order to implement the program. In the Budget section, tribes will need to describe how they plan to allocate the HAF funding they receive between the various expenses they will cover.

f. Questions.

Mr. Heisterkamp and Ms. Wirba then opened up the call for feedback and questions from the participants. Below are the questions raised by the participants, with the responses provided underneath.

- What type of mortgages are allowable?
 - Many types are allowable: second mortgages, manufactured housing mortgages, contracts for deeds, land contracts, and mutual help agreements are all allowed.
- Can you obtain a copy of your submission from the Treasury site?
 - Yes, tribes are able to access whatever they enter into portal. They are also allowed to do multiple revisions to the Plan itself, so the portal is open for making those revisions.
- How is a “primary residence” defined? How do we address the “snowbirds”?
 - Tribes will probably need to add criteria to the Plan that addresses those individuals who spend half of the year in a second home. There are other federal programs that likely address this that tribes could use as guidance.
- Is there an alternative to submitting HAF Plans to Treasury other than the portal? It is a nightmare.
 - Unfortunately, the portal is the only option.
- Can the HAF funds be used for property taxes?
 - Yes, payments will need to go directly to the state or county.
- When will HAF Plans be confirmed?
 - Treasury is reviewing Plans as they receive them and is slowly starting to approve the Plans.

- What limit should a tribe use for habitability of a home?
 - Some TDHEs gravitate to using the caps provided by the Bureau of Indian Affairs' (BIA) Housing Improvement Program (HIP). However, the HIP is not as well funded, so tribes might use that as a basis but increase the amount to be proportional to the HAF Program. If a tribe is going to renovate houses, they might want to consider the regular costs of doing so in their area.
- Given the long timeline of availability for these funds, will there be additional money released beyond the initial allocations?
 - There will probably be a period of reallocation of unclaimed funds, but Treasury has not yet addressed that.
- What expenses would qualify under increasing the “habitability of a home”? For example, can a person receive a ductless heat pump to offset money spent on heating a home? Does this include all property of the home? Would it include replacement of a fence that has blown down and is a hazard?
 - If you can write a Term Sheet that those issues affect the habitability in your area, Treasury will take your word for it. Treasury will look to you to justify why those issues affect the habitability of your home.
- If homes were built with sweat equity and do not have “title”, will the lack of title be a problem?
 - Regarding obtaining clear title to a home, you can establish criteria for how you will determine what a “homebuyer” is. If homebuyers do not have traditional titles for a home, such as sweat equity homes, this is allowable as long as you write that criteria into your plan. Tribes simply need to be consistent and accurately describe what criteria they will use to determine “homebuyers”. If a homebuyer needs assistance to gain clear title to their home, that is allowable.
- In the updated guidance provided on August 2, 2021, Treasury made additional provisions in Qualified Expense #7 to add “including the reasonable addition of living space to alleviate overcrowding” and in qualified expense #8 noting a housing counseling agency used may be approved by HUD or a tribal government. What do these cover?
 - If you can help homeowners by adding more bedrooms in a house to add to the affordability, that is allowed. Regarding the housing counseling, if your current program has housing counseling, that would be eligible expense — it does not need to be HUD-approved.
- If a participant has used other COVID-19 relief funding, do we still assist them for that month? Is that other relief funding considered part of their total annual income?
 - HAF funding should not be counted as income. You can provide them with HAF assistance even if they received other relief funding. The key is to make sure they do not duplicate benefits and do not receive funding for the same exact expenses.

- Can funds be used for homeowners to convert from propane to natural gas?
 - If you find that that is a need for your area, then funding can be used for those costs. However, it will be important to describe this into your term sheets and explain why you need it.

- Can HAF funds assist tenants of LIHTC units who are converting to homeownership, similar to Mutual Help conversions?
 - There are no restrictions on what funding source built the home or assists the home now.

- Will an environmental review be triggered by using this particular type of funding for eligible activity?
 - Treasury does not have a detailed process for environmental reviews. Tribes can look at the HUD process for details on construction work.

- Could a household in a lease purchase agreement be a homeowner and receive assistance under the HAF Program? If a TDHE defined a person in a lease purchase agreement as a renter in its ERA Program, can the TDHE now define the same person as a “homeowner” in its HAF?
 - It depends on what you define as a “homeowner” in your HAF program. If you assisted them as renters under the ERA Program, and then you want to also help them under the HAF Program to help them achieve homeownership, you should emphasize why you are providing further assistance and how it will help them achieve homeownership. However, make sure that you are not duplicating benefits by providing assistance for the same expenses you provided ERA Program assistance.

- What are the chances that the November 15, 2021 deadline for submitting the Notice of Request will be extended again?
 - It is unlikely to be extended again.

- Can the TDHE use these funds to pay themselves as a contractor to provide renovation services for eligible recipients?
 - There is no restriction on doing that, but make sure you do it in the same parameters and on the same budget as you would an outside contractor.

- Would Davis Bacon wage rates be applicable?
 - If those rates would apply normally to HUD/NAHASDA/tribal programs, it is best to follow those rates for any work done under the HAF Program.

- Is offering materials in a separate language required?
 - No, it is not required.

- Would the costs of contracting with a consultant to help develop the Program eligible administration expenses on HAF?
 - Yes, these are eligible expenses.
- Can we convert garage space into bedrooms with this funding?
 - Yes, if you find that necessary to reduce overcrowding.
- Could (or should) a TDHE require the unit to be meth-tested before assistance is received?
 - It might be a good idea to write meth testing in as a criteria before a homeowner can receive assistance.
- Can we use the funds to update modular older than twenty-five (25) years old?
 - If you decide that the home will continue to last, then yes.
- Would we be able to purchase mobile homes or build new construction homes to reduce overcrowding within the community and add homes to our housing inventory? Or are funds limited to repairs of existing homes rather than the purchase of new inventory?
 - Tribes and TDHEs are not able to use the HAF Funds to purchase or build new homes. The HAF Program is not intended to create new homebuyer opportunities. You can only preserve existing homes.
- Are you interpreting chattel loans for mobile homes as eligible for assistance under the HAF Program?
 - Yes, they are likely eligible, as long as you can accurately describe why providing that assistance helps the homeowner.
- If a home is paid off, does the homeowner qualify for assistance?
 - Yes, this qualifies, as the Program was designed to assist current homeowners.
- Does anyone have an example of an attestation of income?
 - There might be some available from the ERA Program that you could convert for use in the HAF Program. Tribes and TDHEs are encouraged to share sample documents with NAIHC. The samples will be posted to the website. You can send documents to lretka@naihc.net.
- Do we need to have a separate policy covering the HAF Program?
 - In general terms, if you fill out the Treasury term sheets, that will dictate your program and will form the basis of your policy. Each tribe's policy will be different because it will be based on what you entered in those term sheets. If you use template HAF policies from some other tribe, make sure you revise it to fit your specific HAF Plan.

- Can we revise and adapt the ERA Program homeowner application to fit the HAF Program?
 - Yes, that is a good place to start.

- Will there be more meetings like this to help us along?
 - Yes, there will be more meetings. NAIHC will coordinate further meetings. Contact sbegay@naihc.net if you have questions or suggestions.

Conclusion

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