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## MEMORANDUM

April 20, 2022

TO: TRIBAL HOUSING CLIENTS

FROM:  Ed Clay Goodman, Nicole T. Russell, and Caitrin M. Shuy  
HOBBS, STRAUS, DEAN & WALKER, LLP

RE: ***HUD Procedural Guidance for HUD-VASH FY 2022 Renewal; HUD Notice of Intent to Establish a Tribal Intergovernmental Advisory Committee; Dear Tribal Leader Letters Regarding Equal Participation of Faith-Based Organizations in HUD Programs and ONAP ARP Recovery Training and Technical Assistance Initiative; Government Accountability Office Releases report on Native American Veteran Housing Program***

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The U.S. Department of Housing and Urban Development (HUD) recently published two Federal Register Notices of particular interest to Hobbs Straus tribal housing clients. In the first, *Procedural Guidance for tribal Housing and Urban Development-Veterans Affairs Supportive Housing (Tribal HUD-VASH) FY 2022 Renewal Grant Application*, Notice PIH 2022-08, HUD announced renewal requirements for the original twenty-six Tribal HUD-VASH Program recipients awarded in 2015 and for the five Tribal HUD-VASH Round I Expansion recipients awarded in 2021. In HUD's second Notice, *Notice of Intent to Establish a tribal Intergovernmental Advisory Committee; Structure and Request for Nominations*, 87 Fed. Reg. 18807 (2022), HUD formally established the Tribal Intergovernmental Advisory Committee (TIAC), invited tribes to nominate tribal representatives to serve on the TIAC, and set forth criteria the nominees must meet to be considered.

On April 8, 2022, HUD issued two 'Dear Tribal Leader' (DTL) letters. The first seeks tribal consultation on HUD's proposed regulatory changes to rules on equal participation of faith-based organizations in HUD programs, and the second sets forth the Office of Native American Programs' (ONAP) American Rescue Plan Act of 2021 (ARPA) Recovery Training and Technical Assistance Initiative.

On April 19, 2022, the Government Accountability Office (GAO) released a report on Native American Housing Programs.

### **I. Federal Register Notices**

a. *Notice PIH 2022-08: FY22 Tribal HUD-VASH Renewal Notice*

In its April 6, 2022 Notice, HUD announced its intent to renew HUD-VASH funds for eligible recipients<sup>1</sup> during calendar year 2022 for a performance period of July 1, 2022 to September 30, 2023. **To receive a 2022 renewal grant, recipients must submit a renewal package by 11:59:59 p.m. Eastern Standard Time on May 27, 2022.**

i. Renewal Funding Components

HUD's Notice establishes that FY2022 Renewal awards will be the sum of two components: rental assistance and administrative fees. The rental assistance maximum is to be determined by the following formula:

*Total units allocated (original, reduced and/or expansion, as applicable) x Maximum FMR served<sup>2</sup> x Fifteen (15) months (period of performance)*

And the administrative fee maximum is to be determined by the following formula:

*Total units allocated (original, reduced and/or expansion, as applicable) x \$95 x Fifteen (15) months (period of performance)*

Further information on eligible administrative and planning expenses can be found at Section VI.M. of *Federal Register Notice*, Implementation of the tribal HUD-VA Supportive Housing Program (Consolidation Notice), FR 6091-N-01, published Tuesday, May 22, 2018. HUD notes that because the period of performance for the Expansion grant coincides with the period of performance for the FY 2022 Tribal HUD-VASH renewal, Expansion recipients must ensure Tribal HUD-VASH Expansion funds are fully expended and expensed before utilizing renewal funding for Expansion units.

ii. Renewal Package Contents

Each renewal package must contain: (1) a cover letter including contact information, a statement as to whether the original tribal resolution for participation in the Tribal HUD-VASH program still applies,<sup>3</sup> and the signature of an authorized representative; (2) a report detailing the

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<sup>1</sup>Tribal HUD-VASH recipients eligible for renewal funding are: (a) Indian tribes and tribally designated housing entities (TDHEs) awarded assistance under the rental assistance and supportive housing demonstration program for Native American Veterans (Federal Register Notice, "Tribal HUD-VA Supportive Housing Program Awards, Fiscal Year 2015" (81 FR 10880)); and (2) Indian tribes and TDHEs awarded assistance under the expansion of the Tribal HUD-VASH demonstration program (Federal Register Notice "tribal HUD VASH Expansion" (FR-6400-N-73)).

<sup>2</sup> If the total number of Veterans served by the recipient has been reduced from total allocated in the initial grant funding, however, the total units allocated will reflect that reduced number.

<sup>3</sup> If the original tribal resolution is no longer applicable, then the recipient should submit a new resolution.

tribal HUD-VASH program's progress,<sup>4</sup> including the leasing performance report,<sup>5</sup> which reflects actual data from the period of April 1, 2021 through March 31, 2022; and (3) a copy of the latest SF-425 form, in addition to—if applicable—any program income used toward meeting tribal HUD-VASH program objectives. If HUD identifies any deficiencies in the renewal packet, it will email the recipient's named point of contact and request a cure. The recipient must respond in the time and by the instructions provided.

iii. Review and Award Process

HUD staff will review the renewal package and—based on the contents of that package, in addition to the recipient's Indian Housing Plan (IHP) and Annual Performance Report (APR) and the recipient's registration status with the System for Award Management—will respond to recipients within 60 days of receipt. Upon HUD's approval of the renewal package, HUD will issue a grant agreement to be signed by the recipient, and will thereupon disburse funds through the HUD Line of Credit Control System (LOCCS). However, HUD may deny a renewal grant if HUD determines that a Tribal HUD-VASH recipient does not have adequate administrative capacity to administer the grant. HUD may likewise impose new or revised mitigation plan requirements or special terms and conditions in accordance with 2 CFR § 200.207 if any substantial administrative or programmatic concerns are identified in the review process.

Finally, PIH 2022-08 provides that recipients should contact HUD immediately at tribalHUDVASH@hud.gov to discuss a voluntary grant reduction if the recipient: (1) has unexpended funding remaining from prior Tribal HUD-VASH grants; (2) has been unable to assist the total number of Veterans for whom they initially were awarded funding; or (3) will not be able to house additional Veterans in the funding period of July 1, 2022 to September 30, 2023. The unexpended grant funds may be returned to HUD and awarded to other Tribal HUD-VASH recipients that have available housing, need, and administrative capacity.

b. *87 Fed. Reg. 18807 (2022): Formal Establishment of the TIAC*

On November 15, 2021, pursuant to the Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (86 FR 7491), HUD published a Federal Register Notice proposing how the TIAC would be structured, describing how it would function, and soliciting tribal feedback. **87 Fed. Reg. 18807** incorporates that feedback to identify the revised TIAC structure and solicit nominations for tribal representatives.<sup>6</sup> **Nominations for tribal representatives are due on or before May 31, 2022.**

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<sup>4</sup> The requirements for the Program Update and Overview are set forth in greater detail at Section 7a, but include: “i. Progress toward meeting the program's goals, ii. Current and projected program enrollment, iii. Challenges faced, iv. Measures taken to address issues, v. Affirm that annual reexaminations are being conducted, vi. Progress of training and technical assistance efforts received to date and ongoing needs, [and] vii. The recipient's community involvement strategies.”

<sup>5</sup> A copy of the Leasing Performance Report is available at [https://www.hud.gov/sites/dfiles/PIH/documents/HUD-5980\\_THUD-VASH\\_Leasing\\_Report\\_May2020.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/HUD-5980_THUD-VASH_Leasing_Report_May2020.pdf).

<sup>6</sup> HUD previously published a June 23, 2016 Federal Register Notice seeking comments on the structure of the proposed TIAC (*Notice of Proposal to Establish a tribal Intergovernmental Advisory Committee; Request for*

The stated role of the TIAC is to provide recommendations and input to HUD, and to provide a vehicle for regular, meaningful consultation and collaboration with tribal officials. And while the TIAC will develop its own ruling charter and protocols, HUD will provide staff support to the TIAC to act as a liaison between TIAC and HUD officials, manage meeting logistics, and provide general support for TIAC activities. The TIAC will be comprised of HUD representatives (appointed by the HUD Secretary) and up to fifteen tribal representatives from across the country, representing small, medium, and large tribes. Up to two tribal representatives will represent each of the six HUD ONAP regions, and up to three remaining tribal representatives will serve at-large. To ensure consistency between tribal terms, representatives will have a staggered term of appointment. In order to establish a staggered term of appointment, half of the tribal representatives appointed in the inaugural year of the TIAC will serve two years and the other half will serve three years.

Nominations for tribal representatives, due May 31, 2022, must include: (1) the Nominee's name, background, and housing/ community development experience; (2) evidence that the Nominee is a **duly elected or appointed tribal leader and authorized to represent a federally recognized tribal government or Alaska Native Corporation**; (3) a written commitment from the Nominee that he or she will actively engage in TIAC meetings; and (4) the Nominee's written preference for either a two- or three-year term on the TIAC. Generally, only elected officers of a tribal government acting in their official capacities with authority to act on behalf of the tribal government may serve as TIAC representatives or alternates of the TIAC. To submit a nomination, please go to [Regulations.gov](https://www.regulations.gov) and press the blue Comments button. You can either upload a document or type a comment in the box that appears.

## II. Dear Tribal Lender Letters

### *a. Tribal Consultation on HUD's Proposed Regulatory Changes to Rules on Equal Participation of Faith-Based Organizations in HUD Programs*

In its first April 8, 2022 DTL letter, HUD proposed a rule to revise its regulations governing the equal participation of faith-based (religious) organizations in HUD programs. These revisions are being undertaken to implement Executive Order 14015, "Establishment of the White House Office of Faith-Based and Neighborhood Partnerships" (Order). The Order requires HUD to review its existing regulations—at 24 C.F.R. § 5.109 and, for the Indian Community Development Block Grant program (ICDBG), at 24 C.F.R. §1003.600—on the equal participation of faith-based organizations and to make necessary changes. HUD proposes to do so by:

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*Comments on Committee Structure*, 81 FR 40899), and a subsequent December 21, 2016 Notice announcing the establishment of the TIAC and requesting nominations from duly elected or appointed tribal leaders to serve on the TIAC (*Establishment of tribal Intergovernmental Advisory Committee; Request for Nominations for tribal Intergovernmental Membership*, 81 FR 93700). Because HUD did not receive an adequate number of nominations to fully staff the proposed TIAC at the time, the process stalled.

- 1) Ensuring access for beneficiaries to HUD assistance regardless their faith or beliefs;
- 2) Requiring providers of direct HUD assistance, both faith-based and secular, to notify beneficiaries about protections for their religious liberty, including that they: (a) may not be discriminated against based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice and (b) may not be required to attend or participate in any explicit religious activities;
- 3) Removing language regarding religious tenets;
- 4) Making text changes to: (a) delete the term “religious exercise” from the rule; (b) revise references to “religious accommodations” to be consistent with applicable law; (c) delete references to the Attorney General’s Memorandum (82 Fed. Reg. 49,668 (Oct. 26, 2017)); (d) provide that HUD will review requests for accommodations on a case-by-case basis in accordance with law; (e) emphasize that HUD shall not disqualify an organization from participating in any program for which it is otherwise eligible on the basis of the organization’s indication it may request an accommodation from one or more program requirements or conditions; and (f) emphasize that HUD shall not disqualify a religious organization from participating in any program on the basis of conduct that would not be considered grounds to disfavor a similarly situated secular organization; and
- 5) Revising the regulation to clarify that if a beneficiary is limited to a provider that integrates explicitly religious activities into the federally funded program, HUD will not disqualify such provider but HUD may (a) ensure that the universe of providers reasonably available to those beneficiaries is expanded to include providers that do not include explicitly religious activities or requirements in their programs; or (b) that the existing provider or providers reasonably available to those beneficiaries observe the conditions that this rule applies to direct aid, including that they not use the Federal financial assistance to support or engage in any explicitly religious activities and that they conduct any such activities separately, in time or location, from the social services supported by Federal funds.

Comments are due within thirty days of April 8, 2022, and may be submitted by e-mail to HUDRegstribalConsult.gov, or by postal mail to:

US Department of Housing and Urban Development  
Center for Faith-Based and Neighborhood Partnerships  
409 3rd Street S.W. Suite 200  
Washington, DC 20024

*b. ONAP ARP Recovery Training and Technical Assistance Initiative*

The American Rescue Plan Act of 2021 (ARP) was enacted on March 11, 2021 to provide funding that would help prevent, prepare for, or respond to COVID-19. In its second April 8, 2022 DTL letter, HUD details ONAP's launch of an ARP Recovery Training and Technical Assistance (TTA) Initiative designed to address increased demands on housing personnel arising from the ARP additional funding. Specifically, the TTA Initiative seeks to assist Grantees in successfully completing their ARP projects, compliantly reporting on those projects, and resuming normal operations. To this end, Grantees with open ARP grants should expect to be contacted by ONAP's contracted providers beginning in May of 2022 to assess the needs, barriers, and constraints, if any, to the successful completion and compliant closeout of projects. ONAP will also develop and schedule national trainings on implementation of the ARP grants while simultaneously providing certain Grantees with the individual training and technical assistance, as necessary.

### **III. Government Accountability Office Releases report on Native American Veteran Housing Program**

On April 19, 2022, the Government Accountability Office (GAO) released a report titled: "Native American Veterans: Improvements to VA Management Could Help Increase Mortgage Loan Program Participation" ([GAO-22-104627](#)). In this report, the GAO found that the Veterans Administration (VA) has not made many loans under the Native American Direct Loan (NADL) program, which was authorized by Congress in 1992. This program helps "Native American veterans finance homes on certain types of land that can be difficult to use as collateral for conventional mortgage loans [such as trust lands]". According to the report, in FYs 2012-21 VA provided 89 loans in the contiguous United States under this program, and none in Alaska which is estimated to be only one percent of those eligible. GAO also found that "less than one-third of federally recognized Indian tribes [in the contiguous United States] have agreements with VA to allow their members to apply for NADL loans" (GAO highlights).

Despite recent efforts by the VA to reorganize and improve the NADL program by forming a dedicated NADL team, GAO found that there were opportunities for improvement. Areas for improvement identified by GAO include data collection and management; outreach planning; and leveraging expertise of other VA offices and federal agencies to prepare borrowers for NADL loans. The report makes 10 recommendations in these areas, and the VA concurred with all these recommendations, and noted that several had already been implemented. The recommendations are outlined starting on page 52 of the report and as follows:

1. The Director of the Loan Guaranty Service should develop a plan for implementation of NADL activities under the new staffing structure, to include staff priorities, resource needs, time frames, and assessment of the changes made
2. The Director of the Loan Guaranty Service should comprehensively assess its needs for collecting and using data to monitor and oversee NADL outreach and [memorandum of understanding (MOU)] negotiation.
3. The Director of the Loan Guaranty Service should develop and implement mechanisms, such as surveys or focus groups, to collect feedback from Native American veterans, NADL-eligible entities, and other knowledgeable groups on NADL activities and identify any opportunities for improvement.
4. The Director of the Loan Guaranty Service should develop and implement program performance goals and measures for NADL outreach, MOU negotiation, and lending activities.
5. The Director of the Loan Guaranty Service should develop and implement processes to routinely and consistently review NADL program documents (including MOUs and policies and procedures) to help ensure they are current, complete, and accurate, and also identify parties to help conduct the reviews, such as VA's Office of General Counsel.
6. The Director of the Loan Guaranty Service should develop a NADL outreach plan based on sound planning practices.
7. The Director of the Loan Guaranty Service should develop a plan for conducting NADL outreach, MOU negotiation, and lending activities in Alaska, including how to assist eligible veterans with interests in land owned by Alaska Native regional and village corporations or, if eligible, Alaska Native allotments and townsites.
8. The Director of the Loan Guaranty Service should develop and implement a mechanism for NADL staff to routinely consult on outreach, MOU negotiation, and lending activities with staff from other VA offices serving Native American veterans.
9. The Director of the Loan Guaranty Service should develop policies and procedures for staff to determine whether eligible entities without a NADL MOU previously received approvals from other federal agencies to participate in their mortgage programs and use such information to inform its approach to outreach.
10. The Director of the Loan Guaranty Service should partner with organizations in Alaska and the contiguous United States to conduct NADL outreach or assist with program activities and assess which partnership models are most effective.

***Conclusion***

If you have any questions about this memorandum, or wish assistance in preparing and submitting comments, please contact Ed Clay Goodman at 503-242-1745 or at [egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com).