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MEMORANDUM

September 29, 2023

TO: TRIBAL HOUSING CLIENTS

FROM: Edmund C. Goodman and Carl L. Baermann
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RE: **HUD Procedures in the Event of a Government Shutdown**

As you are aware, it is looking increasingly likely that Congress will not reach an agreement on FY24 appropriations by September 30, 2023, which will result in a government shutdown. Given that likelihood, we have reviewed the *HUD Contingency Plan for Possible Lapse in Appropriations 2023* (“HUD Contingency Plan”), which can be found at the following link: <https://www.hud.gov/sites/documents/HUDCONTINGENCYPLANFINAL.PDF>.

This memo summarizes some of the basic points in the HUD Contingency Plan as they apply to Tribal housing programs.

The HUD Contingency Plan notes: “In the event of a government shutdown due to a lapse in appropriations, most Federal employees are required to stop work because no funds would be available to pay staff and the government is prohibited from accepting voluntary services. A limited number of employees are ‘excepted’ from this general rule based on the functional activity they perform.” HUD Contingency Plan at p. 7. Thus, the general rule is that HUD employees are not to report to work or carry out any work functions during the shutdown. There are, as noted above, exceptions to this general rule, which are referred to as “excepted work.” The HUD Contingency Plan goes on to identify “excepted work” in its various departments and offices.

Excepted work by the Office of Public and Indian Housing (which includes the Office of Native American Programs, ONAP) includes the performance of functions that are funded through multi-year appropriations or no-year appropriations, including staff work to perform the minimum necessary supporting activities for such functions. This work includes staff work “to perform the minimum necessary supporting activities for such functions described in [the HUD Contingency Plan], or where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property.”

Since Tribal housing programs depend on HUD staff to approve and facilitate the release of Indian Housing Block Grant funds from the Line of Credit Control System (LOCCS), HUD will authorize staff to work, on a rotating and intermittent basis, to review requests to draw down funding from LOCCS, as well as to provide needed approvals for other programs where the flow

of already-appropriated funds is dependent on HUD staff (such as Section 184 loans, Title VI loans, LIHTC). The Energy and Performance Information Center (EPIC) System, which is the system used for reporting requirements, will also continue to be staffed as needed.

Some of the specific items of “excepted work” identified in the HUD Contingency Plan relevant to Tribal housing program are the following:

- Keep open the line of credit control system for the purposes of disbursing previously obligated funds for public housing (operating subsidies and capital funds) and Indian programs.

Where further action or review by HUD employees is not required for funds to be drawn down from the system, grantees will be able to draw funds normally.

Where further action or review by a HUD employee is required before a grantee may access previously obligated funds, PIH will recall employees intermittently to review and approve or deny disbursement requests as necessary to avoid an imminent threat to the safety of human life or property.

- Manage the HUD Central Accounting Program System (HUDCAPS) for purposes of disbursing previously obligated funds for section 8 tenant-based rental assistance (Housing Assistance Payments and Administrative Fees). A PHA’s HUD-held Housing Assistance Payments (HAP) reserves may be requested (or may be automatically disbursed) to address emergency situations, including where families are at risk or terminations of assistance or where PHAs cannot afford to pay their contractual Housing Assistance Payments to Owners.

- Work closely with OCFO to identify, when previously obligated Operating Subsidy, Housing Assistance Payment (HAP), or HAP Administrative Fee allocations may be insufficient to support ongoing program operations, if any available carryover funding remains or advance appropriations are available that can be used to fund these subsidy programs. If such funds are available, the necessary obligational actions will be taken to make such funds available for timely disbursement. Note that only no-year or multi-year amounts appropriated in a prior year will be legally available for this purpose, and no amounts made available by now-expired Continuing Resolutions (CRs), can be utilized.

- At receivership or HUD possession, HUD staff continue to assist with (and/or carry out) functions delegated to the PHA Recovery Administrators/Receivers.

- Existing Technical Assistance and Capacity Building cooperative agreement awards, where funds have been previously obligated and work plans have been approved, may continue performance. Actions that require HUD staff review and approval, such as the review and approval of workplan amendments or the modification of workplans, will not take place during a lapse in appropriations. However, if such proposed actions are related to an imminent threat to life or property, HUD staff will be recalled to review and approve workplan amendments or modifications.

- Conduct closings on Mixed Finance and Choice Neighborhoods transactions where the failure to close by a set date would threaten the property and demands immediate response (e.g., loss of Low-Income Housing Tax Credits, New Markets Tax Credits and/or other critical financing commitments). Depending on the circumstances, further legal consultation will occur.
- In the event of an emergency (e.g., a contract termination due to safety and health violations; submission of an emergency/disaster Section 18 application, etc.), process a tenant protection action to provide vouchers for families to move from the project.
- The Real Estate Assessment Center (REAC) Technical Assistance Center (TAC) will be operational and available to receive and answer questions related to both Multifamily and PIH financial submissions, all inspection inquiries, resident income verification and other such technical areas managed by the REAC.
- However, responses that require HUD staff review or approval will be delayed until the lapse in appropriations has ended.
- Respond to any other issues directly related to the imminent threat to the safety of residents or the protection of property.

Public housing agencies and other grantees continue operating in the event of a federal government lapse in appropriations and there are existing IT systems that will be available to public housing agencies so that they can draw down obligated funding from prior years which can be drawn down without further action or review by HUD employees. The systems below are considered excepted activities that are necessary to protect property and records:

- Enterprise Income Verification
- Inventory Management System/PIH Information Center (IMS/PIC)
- Voucher Management System (VMS)
- Financial Assessment Sub-System
- Physical Assessment Sub-System
- Integrated Assessment Sub-System
- Management Assessment Sub-System
- Technical Assistance Center
- Energy and Performance Information Center (EPIC) System
- Line of Credit Control System (LOCCS)
- HUDCAPS

HUD Contingency Plan at pp. 11-13.

Conclusion

If you have any questions, please contact Ed Clay Goodman (503-242-1745 or egoodman@hobbsstrauss.com) or Cari L. Baermann (503-242-1745 or cbaermann@hobbsstrauss.com).