




MEMORANDUM

December 20, 2024

To: TRIBAL HOUSING CLIENTS

From:  Ed Clay Goodman and Cari L. Baermann
HOBBS, STRAUS, DEAN & WALKER, LLP

Re: ***HUD & IHS Tribal Consultation: Housing and Water/Sewer Infrastructure and Indian Health Service Appropriations Rider***

On December 16, 2024, the U.S. Department of Housing and Urban Development (HUD) Office of Native American Programs (ONAP) and Indian Health Service (IHS) held a virtual Tribal Consultation on housing and water and sewer infrastructure. This memorandum provides a summary of the Tribal Consultation.

HUD and IHS held the Tribal Consultation to provide a forum for tribes to provide feedback on how HUD and IHS funding can provide increased support for housing-related water and sewer infrastructure needs in Tribal communities. Jad Atallah, Director of ONAP's Office of Performance and Planning; Nick Zolkowski, ONAP Specialist; Ben Shuman, Associate Director of IHS' Office of Environmental Health; Roselyn Tso, Director of IHS; and Steve Lucas, Chief of Staff of HUD's Office of Public and Indian Housing, gave opening remarks.

Mr. Shuman remarked that currently, an annual appropriations rider prohibits tribes from using IHS sanitation facilities funding for new homes funded through HUD grant programs.¹ This includes new homes funded by the Indian Housing Block Grant (IHBG). Mr. Shuman emphasized that the prohibition on the use of IHS sanitation facilities funding is not an IHS policy but is instead a Congressional decision. As a result, any change to that prohibition must be accomplished by persuading Congressmembers to remove it.

Mr. Shuman commented that the need for both housing and water and sewer infrastructure in tribal communities has outpaced the level of available government funding. Tribes therefore seek to combine and leverage various federal funding to address these needs. Many tribes need IHS sanitation funding to develop sanitation systems for housing construction projects. However, Mr. Schuman noted that the appropriations rider forces tribes to choose between using HUD funding or IHS sanitation funding for the project. Some tribes have advocated for removing the sanitation funding prohibition, so that tribes can combine HUD funding with the sanitation funding. On the other hand, other tribes support the funding prohibition, because it allows tribes

¹ See, e.g., Consolidated Appropriations Act of 2024, Pub. L. 118-42, 138 Stat. 275 (2024)
<https://www.congress.gov/bill/118th-congress/house-bill/4366/text>.

to prioritize providing sanitation to existing homes. The IHS's sanitation funding is intended primarily to repair and replace existing water and sewer infrastructure.

On September 9, 2024, HUD and IHS issued a [Dear Tribal Leader Letter](#) (DTLL) addressing the prohibition on using IHS sanitation facilities funding for new homes funded through HUD grant programs. The DTLL states that HUD and IHS are seeking tribal feedback on a number of specific questions, listed below.

1. Are there ways that the HUD and IHS programs could work alongside each other to provide for both housing and related water and sewer infrastructure more efficiently?
2. How has the appropriations language provision, which prohibits IHS from using sanitation facilities construction (SFC) funding to construct sanitation facilities for new housing built by Tribes or Tribally Designated Housing Entities (TDHEs) using HUD grant funding, impacted your ability to construct new housing or provide water and sewer infrastructure in your community? Please share any relevant information or data with HUD and the IHS, particularly regarding the impacts on the efficiency of planning and development processes.
3. Should IHS funds be prioritized to address sanitation facility needs for existing homes and non-HUD new and like-new homes,² or should some portion of IHS funds be made available to assist Tribes with sanitation facilities for new HUD-funded homes?³
4. The HUD ICDBG funds can address the construction or repair of sanitation facilities used by an entire low-to-moderate income Tribal community; HUD IHBG funds are limited to the construction or repair of “necessary infrastructure” associated with homes occupied by low-income Tribal members. Should HUD revise the ratio of ICDBG to IHBG funding and/or consider changes to IHBG-eligible uses in order to make a greater proportion of HUD housing funds available for community-wide sanitation facilities?
5. Prior to the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA), the IHS collaborated with Tribes or TDHEs to review proposed HUD homesites for sanitation facilities. The HUD appropriation included funds for sanitation facilities at all new HUD-funded homes to Tribes and TDHEs, which HUD then contributed to the IHS for construction. After NAHASDA, Tribes and TDHEs managed all funds and planning for new HUD homes, excluding the IHS from these processes. With Tribes and TDHEs handling site selection and infrastructure construction, what role, if any, should the IHS play in connecting new HUD homes to sanitation facilities?
6. Considering the net impact of the appropriations language provision on affordable housing and water and sewer infrastructure development in your area, both positive and negative, should the Administration propose that Congress retain, amend, or remove this longstanding provision and allow the IHS to serve HUD-funded new homes?
7. Are there any other related issues that you would like to share with our agencies?

² IHS. Criteria for the Sanitation Facilities Construction Program. Chapter 6, page 2 (2003)

³ HUD estimates 68,000 units of affordable are needed to replace substandard or overcrowded units in Tribal areas; in 2023 IHBG funds were used to build or acquire 502 units. See FY 2025 ONAP CJ, Pages 13-2 and 13-3.

Tribes and TDHEs can email their comments and feedback to: consultation@hud.gov and consultation@ihs.gov, using the subject line “HUD/IHS Housing-related Infrastructure for Tribal Communities.” The comment period closes on **January 8, 2025**. Please let us know if you would like assistance with drafting and submitting comments.

I. Comments from Participants

ONAP and IHS staff then opened up the call to participants to ask questions and provide feedback on the sanitation issues generally and on the seven questions listed above. The questions and comments provided by participants are noted below. ONAP and IHS staff did not provide a response to all comments, but where ONAP and IHS staff did provide a response, we note the responses underneath the question or comment.

- **Tribal comments:** The participant's tribe is tasked with relocating tribal housing to move it out of flooding and tsunami zone. The separation of the IHS and HUD funding creates a fragmented approach to development, requiring tribes to navigate multiple funding streams. Each of those funding streams have their own set of regulations and requirements with which tribes have to comply. This creates additional hurdles for tribes.
- **Tribal Comment:** Will HUD and IHS share or help facilitate sharing digital data between federal agencies on the prioritization, scheduling, and budgeting of sanitation projects?
- **Tribal Comment:** It would be useful for HUD and IHS to help tribes avoid having to go through extra hoops to secure federal funding.
- **Tribal Comment:** There would not enough appropriations to address sanitation in Indian country, even if you remove the sanitation funding restriction. A more beneficial option would for the agencies to request more funding from Congress to fund tribal sanitation. Removing the prohibition to allow use of IHS funding for HUD-funded new homes would reduce the IHS funding available to wider tribal community to address repairs and improvements to existing sanitation infrastructure.
- **Tribal Comment:** It would be beneficial for tribes if IHS and HUD could step in and help facilitate dialogues between tribes and local utility providers to help tribes obtaining sanitation through local providers.
- **Tribal Comment:** How did IHS and HUD handle sanitation funding before the enactment of NAHASDA?
 - **ONAP Response:** HUD provided funding directly to IHS for the construction of sanitation facilities. With the enactment of NAHASDA, HUD now instead provides funding directly to tribes, so tribes and TDHEs have a greater responsibility for developing water infrastructure for new homes funded under HUD programs. This allows tribes and TDHEs more control over how and where the funding is spent, with of course the limitation of not using the IHS sanitation funding on HUD-funded new homes.

- **Tribal Comment:** If the restriction is lifted, will HUD replace IHS funds to pay for water and sewer projects?
- **Tribal Comment:** The prohibition on the use of IHS sanitation funds for water and wastewater systems cripples housing development, as it restricts tribes and TDHEs from efficiently using federal funds to develop water and sewer infrastructure in scattered site housing developments
- **Tribal Comment:** One recommendation is that HUD and IHS should agree that housing is a form of preventative healthcare, and having healthy people in housing is a fundamental building block of functioning society. As a result, HUD and IHS should collaborate to consider how to provide sanitation as a means of providing healthy housing.
- **Tribal Comment:** The sanitation funding prohibition prevents tribes from efficiently allocating resources to where those resources are most needed. The prohibition further hinders tribes and TDHEs from implementing comprehensive development plans.

ONAP and IHS staff made closing remarks, noting that they look forward to receiving written comments from tribes and tribal advocates.

Conclusion

If you have any questions about this memorandum, please contact Ed Clay Goodman (egoodman@hobbsstrauss.com) or Cari Baermann (cbaermann@hobbsstrauss.com); both may be reached by phone at 503-242-1745.