**[LETTERHEAD]**

March 3, 2021

Michael Faulkender, Assistant Secretary for Economic Policy

U.S. Department of the Treasury

1500 Pennsylvania Ave., NW

Washington, DC 20220

Dear Assistant Secretary Faulkender:

We understand that the U.S. Department of the Treasury (Treasury) wishes to obtain comments from Indian tribes and Tribally Designated Housing Entities (collectively “tribe”) regarding the Emergency Rental Assistance Program (Program) established pursuant to Title V of the Consolidated Appropriations Act of 2021 (Title V), which Program will be administered by the Treasury. As the Executive Director of [NAME OF ENTITY] , we wish to provide you with comments as they relate to: the immediate need for Program guidance; updates to a Frequently Asked Questions (FAQs) document previously issued by the Treasury, the most recent of which is dated February 22, 2021; the use of Program funds; the reallocation of unused Program funds; the Program reporting requirements; and the “Eligible Household” definition for the Program under Title V. Understandably, the Program guidance is general in nature so it cannot consider the nuances of each type of housing program that exists. The legal and regulatory requirements that Congress and the United States Department of Housing and Urban Development (HUD) impose on Tribal housing programs create unique circumstances that make it unclear or challenging for us to fully implement this Program without additional guidance. We are committed to minimizing the impact of the COVID-19 pandemic on our communities, and your prompt assistance in addressing our concerns about the Title V funding will help us to accomplish that within the time allotted.

One way that our tribal governments exercise self-determination is by assuming responsibility for administering a variety of federally funded programs and services in our communities. The Native American Housing Assistance and Self Determination Act (NAHASDA) is one such program. By doing so, we exercise our inherent authority to self-govern by making decisions on issues that affect the people within our communities. because we know their specific needs. NAHASDA is designed to facilitate our self-governance, but because the Title V Program was not designed with NAHASDA and tribal communities in mind, tribes may be unable to effectively use the funds even though we experience significant needs related to housing that result from the COVID-19 pandemic. Practically speaking, it will be difficult, if not impossible, for a large majority of tribes that have received Program funds to use the entirety of the funds for only a few discrete items (*i.e.,* rent and utilities and energy costs) for which they may already have monies allocated from other sources. However, there are other expenses for which Program funds could and should be used to improve the living conditions of tribal households. Such expenses include the replacement of windows, and heating, ventilation, and air conditions systems within housing units to improve energy efficiency and, in turn, cause a reduction in utility and home energy costs. Such expenses should also include a replenishment of the funds lost or expended by tribes based on a loss or forgiveness of rents from tenants and homebuyers due to circumstances caused by COVID-19; these rent monies help tribes operate the housing units.

As such, we recommend that the Treasury, having the discretion to do so pursuant to Title V, allow for greater use of Program funds beyond costs specific to rent and utilities and home energy costs, and to consider our specific proposals for using Program funds to pay “other expenses” allowable under Section 501(c)(2)(A)(v) of Title V; and also grant tribes the discretion to undertake other such activities using Program funds based on the needs of the families that they serve so long as the need for such activities are COVID-19 related.

1. **Need for Program Guidance and updated FAQs.** On February 22, 2021 the Treasury issued an updated FAQs for the Program. We reviewed the FAQs and identified a number of areas for which we need clarification as follows:
   1. What application and application process must be used in order for eligible households to obtain financial assistance and housing stability services under the Program?
   2. Is an applicant prohibited from receiving Program assistance for utilities and home energy costs if the applicant’s household receives a monthly federal subsidy and its tenant rent is adjusted according to changes in income (see question #9, second paragraph of the January 19, 2021 FAQs document)? We interpret the answer to FAQ #9 and #12 to mean that an applicant is eligible when the tenant is responsible for all or part of the utility costs; please confirm.
   3. How is eligibility for prospective payments of rent and utilities and energy costs determined? The answer to FAQ 12 states that “[t]he limitations in Section 501 (c)(2)(B) of Division N of the Act limiting assistance for prospective rent payments do not apply to the provision of utilities or home energy costs.” That section limits prospective rent payments to three months. Does making this limitation inapplicable mean that prospective utility payments may be made subject only to availability of funds? Also, what if a tribe makes such payments to a household and later learns that the household should not have received the payments?
   4. Housing units that are subject to a Lease-purchase Agreement are actually rental units under NAHASDA, because the tribal housing program maintains administrative oversight and the ultimately responsibility for maintenance until all payments are made and the unit is conveyed. Neither the law nor the FAQs address such units. Please confirm that these are rental housing units for the purpose of Title V Program assistance for rent, utility, and energy costs.
   5. When tribes use their own funds to pay utility and energy costs of homeowners who meet the Title V income eligibility requirements, it reduces the funds available for operations and other housing-related purposes. We propose that Program funds be used to reimburse the tribe for such payments.
2. **Use of Program Funds.** We have several concerns and recommendations regarding the use of Program funds. These include the following:
   1. **Financial Assistance.**
      * 1. Section 501(c)(2)(A)(v) of Title V provides that a tribe can use Program funds to pay for “other expenses related to housing incurred due, directly or indirectly, to the [COVID-19] outbreak.” This phrase is not defined by Title V, but the February 22, 2021 FAQ names relocation expenses, late fees, and a limited amount for internet services as examples. Certain related expenses necessarily result from these few examples. For instance, using funds to pay for internet services to support telework, home-based schooling, telemedicine, and searches for government services without the hardware and software to access the internet does not accomplish the intended purpose, and instead benefits only the internet service providers. We propose that tribes develop their own policies to use Program funds to purchase a limited amount of hardware and software to access internet services in order to access and maintain these vital lifelines in Indian communities. Similarly, relocation expenses for households that have been temporarily or permanently displaced due to the pandemic involve more than rental fees, and limiting allowable expenses to rental fees benefits only landlords. Overcrowding has always been prevalent in Indian country. Households that are newly formed to alleviate overcrowding will incur expenses for basic household necessities such as cookware and furnishings. Again, tribes are in the best position to identify such families and to develop policies for the limited use of Program funds to assist them. We propose that Treasury acknowledges these apparent needs and agrees that tribes should develop their own policies to implement this provision of the Act in a way that actually benefits their communities. .

* + - 1. Section 501(c)(2)(B) of Title V places a limitation on the payment of Program funds for prospective rents. Specifically, Title V provides that, for an eligible household applicant having rental arrears, the tribe cannot pay the prospective rent of these households unless the tribe has also provided assistance to reduce the rental arrears. However, Title V does not provide that the tribe must pay all of these rental arrears before it will be allowed to pay for the eligible household’s prospective rent. As such, we recommend to the Treasury that, if a tribe pays for any portion of an eligible household’s rental arrears, the Treasury should allow the tribe to also pay for the household’s prospective rent.
      2. Many tribal members are experiencing homelessness and overcrowded living conditions due to COVID-19 and related loss of income. Is it possible to use housing stability funds to assist the family to find a home and to then pay anticipated rental and utility costs? The February 22, 2021 FAQ seems to support these activities by saying that relocation expenses and rental fees are one example of the “other expenses” referred to in Section 501(c)(2)(A)(v) of Title V (FAQ #7, 2/22).  If relieving overcrowding resulted in homelessness, those homeless individuals are entitled to “relocation expenses and rental fees,” even outside of the tribe’s service area as long as they are not already receiving assistance (FAQ #16, 2/22).  Once the family receives assistance with relocation and rental fees, is it possible to then assist with the payment of prospective rents and utilities?
  1. Section 501(k)(3)(B) of Title V contains an exception under the “eligible household” definition, requiring a tribe to ensure that Program funds made available to an eligible household must not be duplicative of any other Federally funded rental assistance provided to the household. We do not believe that the provision of low-cost affordable housing under NAHASDA constitutes rental assistance under Title V. While we fully understand the concept of duplication of services, we must note that the sustainability of our housing programs depends on rental receipts. When the pandemic began and we were faced with stay-at-home orders, we took steps to protect low-income individuals by reducing, and in some case, waiving rents when people had no resources due to workplace closures and restrictions due to the COVID-19 pandemic. We never expected that duration of the pandemic and the reduction in income would continue. Our decision to reduce and waive rents has reduced our operations and maintenance funds considerably. Because of COVID-19, we continue to incur operations and maintenance costs related to COVID-19 as we plan for maintaining safe living environments. We propose that Title V funds be available to reimburse lost rental income for federally assisted units so that we can continue to operate and maintain our housing programs.
  2. **Administrative Costs.** Section 501(c)(5)(A) of Title V limits the Program administrative costs of a tribe to 10% of the total Program funds that it receives. However, Title V does not specify whether these administrative costs must be allocated by the same ratio as the ratio used for the allocation of Program funds, *i.e.,* 90% for financial assistance and 10% for housing stability services. We recommend that the Treasury specify whether the Program administrative costs of a tribe must be apportioned in any particular way.

Additionally, due to the increased burden placed on the tribes, a 10% limitation on administrative costs seems woefully inadequate. Based on our historical experience, 20% is a reasonable percentage for administrative costs.

1. **Reallocation of Unused Program Funds.** Section 501(d) of Title V provides that, beginning on September 30, 2021, the Treasury Secretary shall recapture excess Program funds not obligated by a tribe pursuant to Title V, and reallocate these funds to other tribes, which at the time of such reallocation, have obligated at least 65% of their originally allocated Program funds. Title V does not define “obligated” as it pertains to this section, which definition is critical in helping a tribe determine how it can most effectively use its Program funds in a timely manner. We recommend that the Treasury provide a detailed definition of “obligated,” so that tribes are made aware of how their Program funds must be dealt with in order to prevent their recapture.
2. **Program Reporting Requirements.** We have several concerns and recommendations regarding the Program reporting requirements. These include the following:
   1. Section 501(g)(3) of Title V provides that the Treasury Secretary “may establish alternative reporting requirements” for tribes. Tribes are already burdened by the reporting requirements of other programs and projects with which they are involved, such as the Indian Housing Block Grant (IHBG) program through the Native American Housing Assistance and Self Determination Act (NAHASDA), the Indian Community Development Block Grant program, and Low-Income Housing Tax Credit projects within their tribal communities. As such, we recommend that the Treasury establish Program reporting requirements that modify, reduce the frequency of, or streamline the data reporting requirements identified under Section 501(g)(1) of Title V, particularly based on the other reporting requirements to which tribes must already adhere; and incorporate the Program reporting requirements into the reporting requirements already used by IHBG recipients.
   2. Section 501(g)(4)(B) of Title V provides that the Treasury Secretary may provide full and unredacted information, including personally identifiable information, for statistical research purposes. We recommend that the Treasury invoke Section 501(g)(3) of Title V, allowing it to establish alternative reporting requirements that limit the provision of full and unredacted personally identifiable information for statistical research purposes, unless such provision is specifically authorized by the tribe that collected the information.
   3. Section 501 of Title V does not directly address audits. This is of particular importance to us, particularly based on the limited administrative Program costs covered under Title V. As such, we ask that the Treasury respond to the following questions:
3. Will the expenditure of Program funds be subject to the Single Audit Act?
4. Will the expenditure of Program funds require a separate audit because the funds are coming from the Treasury?
5. **Eligible Household.** We have several concerns and recommendations regarding the “Eligible Household” definition under Section 501(k)(3) of Title V. These include the following:
6. Section 501(k)(3)(A) of Title V defines Eligible Household as one for which the tribal housing program determines that one or more individuals within the household has incurred significant costs due, directly or indirectly, to the COVID-19 outbreak. This places a significant burden on the tribal program without any criteria or guidance. As written, any income eligible household living on a reservation can be said to have incurred significant costs due to COVID-19 by driving to town while unemployed to buy groceries. We request that the Treasury provide some criteria so that we can better avoid the possibility of repaying funds.
7. Section 501(k)(3)(A)(iii) of Title V provides that, as part of its eligibility for Program funds, a household must have an income not more than 80% of the area median income for the household. We recommend that, because Program funding is linked to NAHASDA, the maximum income for a household should be based on 80% of national or area median income, whichever is higher. In addition, tribes should be able to continue relying on the definition of “annual income” in the regulations that implement NAHASDA (24 CFR §1000.10) when such definitions are more favorable to tribal members.
8. Section 501(k)(3)(C)(ii) of Title V provides that, if a household just recently became income eligible for Program assistance, the tribe will need to redetermine the eligibility of the household after each three (3) month period for which the household receives assistance from Program funds. This will be extremely burdensome to tribal program staff, particularly based on many households having become low-income for the first time in recent months and also being eligible for Program assistance under Title V. Our programs continue to operate at reduced capacity in order to maintain social distancing during the COVID-19 pandemic. As such, we recommend that the Treasury increase the redetermination requirement to every six (6) months.

We are pleased to provide you with the aforementioned comments and recommendations regarding the Program. If you have any questions or concerns, please feel free to contact us.

Cordially,

[NAME OF ENTITY]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[**NAME**]**, **[**TITLE**]**

**[**E-MAIL ADDRESS**]**