



215 SW Washington Street, Suite 200  
Portland, OR 97204

T 503.242.1745  
F 503.242.1072

HOBBSSTRAUS.COM

## MEMORANDUM

July 26, 2022

To: TRIBAL HOUSING CLIENTS

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

Re: ***Treasury's Emergency Rental Assistance Program Tribal Recapture***

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On July 18, 2022, the U.S. Department of the Treasury (Treasury), released a “Notice Regarding Recapture and Reallocation of Tribal ERA1 Funds” (“Treasury Notice”) regarding the Treasury Emergency Rental Assistance Program (“ERA Program”). This memorandum provides a summary of the Treasury Notice, which is attached to this memo.

### ***I. ERA Program***

As we have reported in prior memos, Tribes received an \$800 million set-aside from the ERA Program funds to assist eligible households who are facing eviction due to unpaid rents and utilities, or the inability to pay prospective rents and utilities. Under the Consolidated Appropriations Act, 2021, Treasury is required to recapture “excess funds” from amounts that grantees have “not obligated” from their initial ERA allocations. The statute required Treasury to begin recapturing these excess funds on September 30, 2021. The statute further granted the Secretary of Treasury with the discretion to determine what qualifies as “excess funds”. Treasury must then reallocate those funds to grantees that, at the time of the reallocation, have obligated at least 65% of their initial ERA allocation.

In the Treasury Notice, Treasury states that it has determined that it will not involuntarily recapture ERA funds from tribes or tribally designated housing entities (TDHEs), even if such funds may be considered “excess funds”. The Treasury Notice encourages tribes to voluntarily return any ERA Program funds they do not anticipate obligating by the September 30, 2022 deadline by which they must “obligate initial allocations.” The Treasury Notice, as well as past Treasury guidance, do not clarify what qualifies as “obligating initial allocations.” The deadline to voluntarily return funds is August 19, 2022. After August 19, 2022, Treasury will reallocate any of the funds that tribes and TDHEs voluntarily return to Treasury.

However, the Treasury Notice specifically states that “any funds from the initial ERA1 disbursement (not including funds received through reallocation) that are unobligated on September 30, 2022 must be returned to Treasury at that time. This is a statutory requirement,

and Treasury cannot provide flexibility on this deadline.” The Treasury Notice further states that tribes and TDHEs may be permitted to use reallocated funds through December 29, 2022, if the funds qualify for this 90-day extension. Treasury will be providing further guidance on the extension in the future.

***Conclusion***

If you have any questions about this memorandum, please contact Ed Clay Goodman ([egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com)) or Cari Baermann ([cbaermann@hobbsstrauss.com](mailto:cbaermann@hobbsstrauss.com)), or by phone at 503-242-1745.