



2120 L Street, NW, Suite 700
Washington, DC 20037

T 202.822.8282
F 202.296.8834

HOBBSSTRAUS.COM

MEMORANDUM

June 15, 2017

TO: Tribal Housing Clients

FROM: Hobbs, Straus, Dean & Walker, LLP

Re: *SCIA Holds Legislative Hearing on the BUIILD Act of 2017 and the Tribal HUD-VASH Act*

On June 13, 2017, the Senate Committee on Indian Affairs (SCIA) held a legislative hearing to receive testimony on two pieces of legislation: the *Bringing Useful Initiatives for Indian Land Development (BUIILD) Act of 2017* and the *Tribal HUD-VASH Act* (S. 1275 and S. 1333, respectively). The *BUIILD Act* would reauthorize the Indian Housing Block Grant under the Native American Housing Assistance and Self-Determination Act (NAHASDA), as well as making several amendments to NAHASDA. The *Tribal HUD-VASH Act* would expand access to housing resources for homeless Native veterans and direct the Indian Health Service (IHS) to provide assistance for the effective implementation of the program's initiatives. A summary of the witness testimony and major issues discussed during the hearing follows.

I. BUIILD Act of 2017

Opening Statements. Chairman John Hoeven [R-ND] provided opening remarks on the *BUIILD Act*, describing his goal of using the Committee's strong bipartisan support for Native housing to push the legislation over the finish line during the 115th Congress. He acknowledged the difficulties previous legislative efforts to reauthorize NAHASDA have encountered upon leaving the Committee. (We note that NAHASDA reauthorization failed in the last two Congressional sessions, despite being passed twice by the House, due to the failure of the Senate to vote on a reauthorization bill. In the Senate, Senator Mike Lee [R-UT], who opposes the inclusion of the Native Hawaiian Housing Block Grant and Native Hawaiian Guarantee Home Loan Programs under Title VIII of a different version of the bill, objected to unanimous consent on the Senate versions of reauthorization, and the bill was never brought to the floor for a vote.) Chairman Hoeven welcomed "any and all" recommendations for avoiding such setbacks with the current bill.

Ranking Member Tom Udall [R-NM] stated his support for a full reauthorization of NAHASDA, including the Title VIII provisions. He noted that the *BUIILD Act*'s carve-out for Native Hawaiians would set "a dangerous precedent" for the Committee in treating Native populations differently under federal law. Senator Brian Schatz [D-HI] expressed strong support for this view, rebuking the *BUIILD Act* as a "direct attack on his state and his people" that signaled a "dramatic departure" from the bipartisan approach that the Committee traditionally takes in addressing Native issues. Chairman Hoeven clarified that the Committee is not precluded from adding Title VIII to the *BUIILD Act*, but he nonetheless cautioned that its inclusion would significantly, if not completely, impair the ability of NAHASDA reauthorization to move forward in the Senate. As an alternative, he recommended setting aside dedicated funding for Native Hawaiian housing through the appropriations process, noting that he, Senator Udall, and Senator Lisa Murkowski [R-AK] also serve on the Senate Appropriations Committee.

Witness Testimony. Heidi Frechette, Deputy Assistant Secretary of the Office of Native Programs in the U.S. Department of Housing and Urban Development (HUD), testified on NAHASDA's effectiveness in responding to the widely varying financial, cultural, and infrastructural needs of tribal communities. She emphasized that NAHASDA has enabled tribes to provide not only more housing units for their tribal members, but also higher quality units. Ms. Frechette commended the *BUIILD Act* for its proposed streamlining of the environmental review process for Section 202 affordable housing projects. She was particularly supportive of how the bill would expand tribal authorization to complete the environmental review process on behalf of all federal agencies associated with the project, rather than being limited to reviewing only the actions undertaken by HUD. The streamlined environmental review would include HUD review requirements, plus any additional laws and authorities required by other participating funding agencies.

Liana Onnen, Area Vice President for the Southern Plains Region for the National Congress of American Indians (NCAI), spoke to the broad impacts that substandard housing has on the health, welfare, and safety of American Indian, Alaska Native, and Native Hawaiian communities. She noted that a recent study by HUD¹ confirmed that increased funding and programmatic support is critically need to help alleviate overcrowding and address structural deficiencies in tribal housing units. She encouraged the Committee to conduct a more comprehensive study of housing conditions in Indian Country to effectively allocate such resources. Ms. Onnen also focused her comments on the importance of maintaining Title VIII related to Native Hawaiian housing programs as a matter of equity. She reiterated the NCAI's commitment to supporting Title VIII as part of the overall reauthorization of NAHASDA programs.

Mark Charlie, President and CEO of the Association of Village Council Presidents Regional Housing Authority (AVCP RHA), discussed the pivotal role of the

¹ Please see "Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs" HUD (Jan. 2017), available at <https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>.

Indian Housing Block Grant (IHBG) program provided for under NAHASDA in advancing Native housing development. As illustration, Mr. Charlie described the AVCP RHA's efforts to rebuild the Village of Hooper Bay in western Alaska following a devastating fire. He reported that the AVCP RHA leveraged IHBG funds and regional partnerships to build a 19-unit apartment building. He urged the Committee to provide more funding for the program, which he stated suffers from reduced purchasing power due to the cumulative effects of flat federal funding since 1998. He also supported the *BUIILD Act*'s extended period of authorization for the IHBG—which would run through 2025—as a reassurance to private investors that Congress supports the program in Native communities.

Sami Jo Difuntorum, Chairwoman of the National American Indian Housing Council (NAIHC), addressed her organization's support for the *BUIILD Act*, noting that Title VIII provisions could move forward independently as a separate piece of legislation or through the appropriations process. Ms. Difuntorum highlighted the critical importance of the bill's proposed changes to Section 703 of NAHASDA related to training and technical assistance. She was particularly concerned that the funds would come out of the Indian Housing Block Grant and not necessarily go to organizations with a specialized expertise in issues related to tribal housing, thus diminishing the effectiveness of the training and technical assistance provisions.

Question and Answer Period. Each of the panelists expressed strong support for a provision of the *BUIILD Act* that would enable NAHASDA funds to be leveraged to meet matching and cost-share requirements for other federal programs. Access to capital poses a significant barrier to many tribes in advancing tribal housing development projects. The panelists believe that increased flexibility in applying NAHASDA funds to other federal programs would encourage local innovation in addressing housing needs that may not otherwise be possible under current regulations.

Senators Udall and Schatz questioned panelists on the issue of moving NAHASDA reauthorization efforts forward without Title VIII. Ms. Onnen expressed concern that separating Title VIII could result in different "classes" of treatment for Native people and communities. Ms. Difuntorum expressed strong support for the Native Hawaiian housing provisions, while clarifying that NAHASDA is not the only vehicle for ensuring that these programs receive adequate support. She stated that NAIHC supports Title VIII in the most efficient form for successfully moving it through Congress, whether that means as part of NAHASDA, independent legislation, or a multi-step process such as direct appropriations.

II. Tribal HUD-VASH Act

Opening Statements. Senator Udall praised the bipartisan leadership of the Senate Committee on Indian Affairs and the Senate Committee on Veterans' Affairs for their sponsorship of S. 1333, the *Tribal HUD-VASH Act*. The bill would authorize a joint housing initiative between HUD and the Veterans Affairs Supportive Housing (VASH) program, which provides housing and rental assistance to homeless Native veterans along

with clinical services. Senator Udall stated that “S. 1333 represents all the good that can happen when members from both sides of the aisle listen to Indian Country and work together to advance tribal priorities.”

Witness Testimony. Keith Harris, Director of Clinical Operations for the Homeless Programs Office in the Department of Veterans Affairs (VA), testified on the limitations of the existing Tribal HUD-VASH Program that currently operates as a demonstration project involving 26 Indian tribes. Mr. Harris reported that identifying eligible veterans to participate in the program can be difficult due to the stringent eligibility criteria, i.e., an initial determination of homelessness or at-risk homelessness, eligibility for VA healthcare, and an assessment of the clinical need for case management services. He noted that few Native veterans meet the “homelessness” criteria because community members tend to take in veterans rather than let them experience unsheltered homelessness, often leading to overcrowded and transient situations. He reported positive developments in the VA-HUD partnership related to veterans care, but noted that attempts to build a similar partnership with IHS has been unsuccessful. Mr. Harris also raised the difficulties the program has encountered in filling vacancies in rural Montana and Bethel, Alaska, noting that the VA has broadened the hiring requirements to expand the applicant pool.

Ms. Frechette testified in favor of the *Tribal HUD-VASH Act*, reporting that 103 Native veterans have been served by the demonstration project to date. She stated that another 201 Native veterans are participating in the case management process with the VA and may soon receive housing assistance under the program. She echoed Mr. Harris’s desire to build a strong partnership with IHS to better identify and serve Native veterans experiencing homelessness in Indian Country. She was particularly interested in the possibility of utilizing the IHS’s growing telehealth services network to deliver VA case management and counseling to veterans living in rural communities.

Mr. Charlie explained that many veterans face complex socio-economic, emotional, and physical issues upon returning to their home communities after completing active duty. He praised the Tribal HUD-VASH Program for providing multifaceted housing and supportive services to Native veterans and their families. He stated that this holistic approach helps to keep Native families together. However, Mr. Charlie expressed frustration at the slow implementation of the program throughout Indian Country. He urged the Committee to provide for the permanent reauthorization of the program to expand the beneficial impacts of the program to other Native communities.

Question and Answer Period. Senator Hoeven requested additional information on the feasibility of establishing a HUD-VA-IHS partnership to serve Native veterans. Ms. Frechette affirmed HUD’s strong interest in the proposal, as did Mr. Harris. Mr. Harris clarified that telecounseling for VA case management purposes is not currently available in the tribal setting due to severely limited Internet access in Indian Country. However, he expressed optimism that telecounseling services could become readily available once a reliable broadband network can be accessed through the IHS system or

alternative infrastructure developments. All panelists agreed that expanded telecounseling services and reduced eligibility requirements would enhance the ability of the program to meet the needs of homeless and at-risk Native veterans across the country.

We attach copies of the *BUIILD Act of 2017* and *Tribal HUD-VASH Act* for your review. If you would like additional information on any of the topics discussed herein, please contact Ed Clay Goodman (egoodman@hobbsstrauss.com or 503-242-1745); or Lisa Meissner (lmeissner@hobbsstrauss.com or 202-822-8282).