



## MEMORANDUM

September 29, 2017

TO: Housing Clients

FROM: HOBBS, STRAUS, DEAN, & WALKER, LLP

Re: ***NAHASDA Reauthorization Bill Introduced in House***

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On September 28, 2017, Representative Steve Pearce (R-NM), along with co-sponsors Gwen Moore (D-WI), Don Young (R-AK), Rick Nolan (D-MN), Tulsi Gabbard (D-HI), Colleen Hanabusa (D-HI), Denny Heck (D-WA), Tom Cole (R-OK), and Betty McCollum (D-MN), introduced H.R. 3864, a bill to reauthorize the Native American Housing Assistance and Self Determination Act (NAHASDA). S. 1895, a companion bill with nearly identical language, was introduced in the Senate by Senator Tom Udall (D-NM), along with co-sponsors Jon Tester (D-MT), Al Franken (D-MN) and Brian Schatz (D-HI). Both bills are attached to this memo.

The last NAHASDA reauthorization was in 2008, and that legislation expired in October 2013. In the two subsequent Congressional sessions, the House – through a similar bi-partisan effort – was able to pass a NAHASDA reauthorization bill. But each time the reauthorization effort failed in the Senate, due to the Senate’s procedural rules that allow a single Senator to hold up a bill.

HR 3864 and S. 1895 are very similar to the NAHASDA bills that the House previously adopted. It contains many of the provisions that tribes requested through the draft bill submitted by the National American Indian Housing Council in early 2013. These bills are very different from the BUIILD Act, which was a NAHASDA reauthorization bill introduced in the Senate by Senator John Hoeven (R-ND) earlier this year. That bill, described by Senate Committee on Indian Affairs staff as a “Chevy, not a Cadillac,” contained only a few amendments, and avoided any of the controversial provisions that might lead to the bill stalling – including, most prominently, authorization for the Native Hawaiian NAHASDA provisions. What follows is a summary of some of the key provisions of HR 3864 and S. 1895.

- **Local Cooperation Agreement waiver requests.** Section 101(c): Sets a 60 day timeline for HUD to act on request for waiver of local cooperation agreement, and waiver request is “deemed approved” if HUD does not respond to request by the end of the timeline.
- **IHP Filing requirements.** Section 102 requires that HUD, in consultation with tribes and TDHEs, to submit recommendations to Congress “for standards and

procedures for waiver of, or alternative requirements” for developing and submitting Indian Housing Plans.

- **Environmental review waiver requests.** Section 103: Sets a mandatory (“shall”) 60 day timeline for HUD to act on request for waiver of environmental review requirement.
- **Applicability of Tribal environmental review to all funding sources.** Section 103 would also extend tribal environmental review carried out on a NAHASDA-funded project consistent with the applicable HUD requirements to satisfy the environmental review requirements from other federal funding sources in the same project, so long as the other funding sources are less than 49% of the funding in a project.
- **Total Development Cost limit waiver requests.** Section 104 would set a 60 day timeline for HUD to act on request for total development costs limit waiver.
- **Removes HUD Section 3 requirements.** Section 201 would exclude NAHASDA projects from applicability of HUD Section 3 requirements (to hire low-income persons in the community for construction and development of projects).
- **Modifies 30% maximum rental payment requirement.** Section 202 would authorize tribes to adopt their own rental policies setting maximum rents in lieu of 30% rule (which would remain the default in the absence of such policies).
- **Conversion of rental unit to homebuyer unit does not require new eligibility certification.** Section 203 would allow conversion of a family in a rental unit to a homebuyer for that same unit without having to be recertified as income-eligible.
- **Binding commitments to be developed by regulation rather than sole discretion of HUD.** Section 203 also removes “binding commitments” requirement for funds utilized on privately owned homeownership units if aggregate cost is less than 10% of total development cost of home.
- **Lease Termination notice period.** Section 204 would clarify application of local/tribal laws for timing of lease termination notices even if there are other funding sources with different requirements.
- **IHS Infrastructure Funding Prohibition.** Section 205 would expressly permit coordination of the use of IHS and other federal funding on infrastructure projects serving developments built with NAHASDA funds (there has long been a prohibition enacted in annual appropriations act against doing such mixing).

- **Setting IHBG appropriations amount.** Section 301 of the House bill would set the IHBG appropriation at \$650 million for each of the next five years. There is no such language setting the appropriations amount in the current NAHASDA. This is one area where the Senate bill differs, in that it does not include any specific dollar amount but instead reads that Congress shall appropriate “such sums as may be necessary” (which is how NAHASDA currently reads). The practical effect of including a specific dollar amount (as in the House bill) may be to serve as a cap but not a floor on future IHBG appropriations. Appropriations are carried out on an annual basis, and the appropriators would not be bound by this language. The IHBG could be subject to further reductions or sequestration, or it could be increased. However, with this number in the language of the statute, future appropriators would likely use that as a justification not to increase appropriations *above* that amount. In the current fiscal environment, it is much easier to reduce funding than to increase it. (The bill also contains similar language setting the appropriations level for the Section 184 loan guarantee program at \$12.2 million for each of the next five years, and the same comments would apply to this language.)
- **Unexpended funds.** Section 302 would codify the requirement that has been incorporated into the last several years of IHBG appropriations, which authorizes a recipient’s annual block grant to be reallocated if that recipient has more than three years’ worth of unexpended funds in their LOCCS pipeline. It does not apply to recipients whose block grant is less than \$5 million.
- **Requiring HUD to issue final monitoring report within timeframe.** Section 401 would require HUD to issue a final monitoring report within 60 days of receiving comments from the recipient being monitored.
- **Reports to Congress and public availability.** Section 402 would require HUD reports regarding NAHASDA program to go to the House Financial Services Committee, the House Committee on Natural Resources, the Senate Committee on Indian Affairs and the Senate Committee on Banking, Housing and Urban Affairs and any other subcommittees of such committees with jurisdiction over Indian affairs, rather than “Congress” generally.
- **Indian Veterans’ Housing Assistance Demonstration Project.** This provision would authorize HUD to take up to 5% of the rental assistance amounts appropriated under the 1937 Act to establish an Indian Veteran specific housing assistance voucher program for the benefit of Indian veterans who are homeless or at-risk of homelessness and who are residing on or near Indian lands. The program would be operated by IHBG recipients. This amendment builds on a demonstration project already under way with certain tribes, and involves HUD and the VA. There is already a similar stand-alone bill for this program, known as HUD-VASH, that we have reported on previously, and which passed out of the

Senate Committee on Indian Affairs. The Senate bill uses the same language as the bill already passed out of the SCIA. There are some differences in HR 3864 regarding this program, the most significant one being that the vouchers could be used for veterans housed in Formula Current Assisted Stock (FCAS) units managed by a tribe or TDHE.

- **Increasing lease terms.** Section 602 would extend the maximum leasehold term for trust lands from 50 years to 99 years, where the land is leased for affordable housing purposes.
- **Native Hawaiian NAHASDA.** Sections 801 and 802 would authorize funding of the Native Hawaiian NAHASDA provisions and loan guarantees. These provisions are controversial, and were the main reason that the reauthorization bill was not able to move through the Senate during the last two sessions.
- **Cherokee Freedmen issue.** There is no language in this bill regarding the Cherokee Freedmen, as there had been in previous years, since the issue has been resolved elsewhere.
- **Congressman Pearce's Alternative Privatization Demonstration Project.** These provisions have been included in the two previous House bills, and they would establish what the Congressman calls a "transformative" demonstration project, modeled on the Military Housing Privatization Initiative (MHPI). The underlying concept is to provide a mechanism to leverage NAHASDA funds to bring substantial private investment into Indian Country for the construction of homes and infrastructure, with the goal of building enough homes to meet all a participating tribes' affordable housing needs in a 24 month period. Participation in the demonstration project is entirely optional, but participation is, however, an all-or-nothing proposition: a tribe that opts in must commit all of its IHBG funding to the project. We have described this demonstration project in detail in previous memos on prior versions of the bill.

If you have any questions, or would like our assistance in preparing and submitting comments, please do not hesitate to contact me at [egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com) or by phone at (503) 242-1745.