



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

T 202.822.8282
F 202.296.8834

HOBBSSTRAUS.COM

MEMORANDUM

March 14, 2018

TO: Tribal Housing Clients

FROM: Hobbs, Straus, Dean & Walker, LLP

Re: *NAIHC 2018 Legislative Conference Held in Washington, DC*

On March 5–7, 2018, the National American Indian Housing Council (NAIHC) held its 2018 Legislative Conference in Washington, D.C. The event brought Members of Congress, tribal leaders, federal officials, and tribal housing representatives together to discuss legislative and policy developments affecting Indian Country. The Department of Housing and Urban Development (HUD) Office of Native American Programs (ONAP) held a Listening Session on the Section 184 Indian Housing Loan Guarantee Program. Attendees also heard from HUD Secretary Ben Carson, the U.S. Census Bureau, as well as numerous congressional offices. This report provides a summary of the Listening Session and major issues discussed during the conference.

I. ONAP Listening Session

Krisa Johnson, Acting Director of the Loan Guarantee Office, and Deana O'Hara, ONAP Senior Advisor, provided attendees with an overview of the Section 184 Indian Housing Loan Guarantee Program (Section 184). The program provides American Indian and Alaska Native (AI/AN) individuals, tribal nations, and tribally designated housing entities (TDHEs) with loans for the construction, rehabilitation, or purchase of a home, as well as for mortgage refinancing. HUD has fast-tracked the review of these regulations and expects to publish a proposed rule by the end of the year.

HUD is conducting an informational webinar on the Section 184 regulations at 2:00 p.m. EST on March 15, 2018. To join the call please dial 1-877-369-5243 and enter access code 0763902#. Additional information on the Section 184 consultation process, including background materials and the dates of future listening sessions, is available at: https://www.hud.gov/program_offices/public_indian_housing/ih/homeownership/184/regulations.

Participants expressed frustrated concern over the lack of clarity on whether HUD considered the meeting to be a listening session or tribal consultation. Federal officials used both terms interchangeably throughout the conference. Participants drew HUD's attention to the fact that attendance at the conference consisted primarily of TDHE representatives, rather than elected tribal officials. They repeatedly emphasized the need

for HUD to meet directly with tribal leaders in order for a meeting to serve as true consultation. Ms. Johnson reported that HUD considered this meeting to be a consultation session consistent with its Dear Tribal Leader letter of February 2, 2018.¹

Several tribal housing representatives discussed the challenges that they have encountered in working with banks during the loan guarantee process. The Ho-Chunk Nation of Wisconsin, for example, reported that many banks are hesitant to work with the Tribe because they perceive too much risk in the Section 184 program. The Tribe reported that it is in the processing of establishing its own Community Development Financial Institution (CDFI) to process loan guarantees. The Choctaw Nation of Oklahoma also raised the need for improved down payment processes to assist program participants with closing costs.

Participants also described gaps in communication that have impaired the ability of tribal governments to assist tribal members who have defaulted on a loan. Participants reported that default notification letters are not sent directly to tribal governments, but instead are sent to tribal attorneys or other third parties. Participants requested that HUD establish a mechanism for identifying the appropriate TDHE or tribal official that a lender should contact to resolve any loan-related issues.

Participants recommended that HUD consider the following proposals to strengthen and improve implementation of the Section 184 program:

- Conduct further consultation to resolve the issue of extending tribal court jurisdiction over Section 184 mortgage foreclosure actions.
- Include a new regulation governing the use of CDFI lending and identify ways – through the administrative or regulatory process – to support tribal nations in developing their internal lending capacities.
- Expand the program's scope to include non-enrolled AI/AN individuals.
- Include tribally-approved leases under the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act as eligible collateral for Section 184 loans under 24 C.F.R. § 1005.107.
- Lower the existing 10% contingency requirement for loans involving trust lands and streamline the processing of such applications.
- Reduce the underwriting and administrative burdens associated with the program, which participants reported has become so burdensome for tribal members that many are turning to alternative sources, including predatory lending practices, for home mortgage products.

¹ Please see the following link for a copy of the Dear Tribal Leader letter titled, "Section 184 Indian Housing Loan Guarantee Program" (Feb. 2, 2018), https://www.hud.gov/sites/dfiles/PIH/documents/2018-02-02_DTL_Section184ListeningSessions.pdf.

II. *HUD Secretary Ben Carson*

Secretary Carson began his presentation by acknowledging the importance of tribal leaders' voices in influence the federal government and how it serves the American people. He shared an optimistic outlook on the national economy due, in part, to passage of the recent tax reform legislation. He highlighted the fact that many employees should expect to see a rise in annual bonuses this year, while noting that the federal government has a moral duty to ensure that this prosperity reaches all Americans.

Secretary Carson discussed HUD's "Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs," which was issued in five separate reports between December 2016 and January 2017.² He reported that, according to the January 2017 HUD housing report, approximately 23% of tribal nations have a significant problems with housing infrastructure and utilities in their communities – compared with 5% of households nationwide – representing an unmet need of approximately 68,000 new affordable housing units. Secretary Carson expressed his belief that the dire socioeconomic conditions affecting much of Indian Country are evidence of a "deficiency of opportunities" in those communities. He extended his comments to the opioids epidemic, stressing that federal officials need to identify ways to lift people in crisis up so that substance use is no longer a "tempting alternative."

The Secretary highlighted the success of the HUD-Veterans Affairs Supportive Housing (HUD-VASH) Program as a way to reduce the number of AI/AN veterans experiencing homelessness. He reported that approximately \$5.2 million in grant funding has been distributed to 26 Tribal HUD-VASH grantees to provide housing and case management services to almost 500 veterans and their families. Secretary Carson affirmed his support for S. 1333, the "Tribal HUD-VASH Act of 2017," which would permanently authorize the program.

We note that under existing regulations, HUD-VASH funds may only be used on-reservation or within an authorized service area. Efforts are underway to include a provision within the FY 2018 and the FY 2019 Transportation, HUD, and Related Agencies appropriations bills that would allow HUD-VASH funds to be used in connection with Formula Current Assisted Stock (F-CAS) under the Indian Housing Block Grant (IHBG) program. We are attaching a one-page memo prepared for several tribal housing entities on this issue. We will continue to monitor the appropriations process and keep you informed of developments.

Secretary Carson concluded his remarks by highlighting ONAP's commitment to effectively leverage scarce funds and resources for the benefit of AI/AN individuals, families, and communities. He noted that access to affordable housing is a national challenge that will not be solved through strictly top-down policies. Instead, he

² Copies of the reports are available on the HUD Office of Policy Development and Research's website at: https://www.huduser.gov/portal/native_american_assessment/home.html.

emphasized the need for "cooperation and goodwill" across all levels of government and society, including Indian Country.

III. Legislative Committee Meeting

The NAIHC held its monthly Legislative Committee meeting in person at the beginning of the Legislative Conference. NAIHC Executive Director Anthony "Tony" Walters lead the meeting.

a. NAHASDA Reauthorization.

Executive Director Walters opened with an overview of where the efforts to reauthorize the Native American Housing Assistance and Self Determination Act (NAHASDA) stand. The authorization for NAHASDA has been expired for five years, but Congress has continued to appropriate funds pursuant to the Act anyway. As of this writing, there are three bills to reauthorize NAHASDA pending in the U.S. Congress: H.R. 3864 (Rep. Pearce's bill) which has been marked up by the House Financial Services Committee); S. 1895 (Sen. Udall's bill) (no action) and S. 1275 (Sen. Hoeven's bill) which was the subject of a Senate Committee on Indian Affairs hearing on June 13, 2017. Mr. Walters provided a section-by-section comparison of the three bills, a copy of which is attached.

Essentially, the Pearce and Udall bills are quite similar: they would both reauthorize and make important improvements to NAHASDA and the Section 184 loan program. Some key differences are that the Native Hawaiian provisions were stripped from Rep. Pearce's bill by the House Financial Service Committee and that bill would also cap the authorization for the Indian Housing Block Grant (IHBG) at \$650 million (the amount currently being appropriated), while Sen. Udall's bill would continue the "there are authorized to be appropriated such sums as may be necessary..." language from the current law. Sen. Hoeven's bill is a much more stripped-down version. Mainly, it would reauthorize NAHASDA and the Section 184 loan program for seven years. It does contain some limited provisions to improve NAHASDA and it would not cap the authorization at \$650 million; however, it does not contain all of the changes proposed by the Pearce and Udall bills. Also, it leaves out the Native Hawaiian provisions.

One attendee pressed Mr. Walters to state which bill NAIHC supports. Mr. Walters responded that this is actually a complicated question to answer because each bill has its own pros and cons and varying chances of passage this Congress. He explained that NAIHC's message is: "We need a NAHASDA reauthorization and it is on Members of Congress to figure out how this happens in a way that supports all IHBG grantees. We [NAIHC] are not going to divide our membership over which bill to support." Mr. Walters said that looking forward, Indian Country will need more allies in Congress, particularly in the wake of Rep. Pearce's planned departure to run for Governor of the state of New Mexico.

b. Other Bills with Indian Housing Implications.

Executive Director Walters also highlighted three other bills of potential interest to NAIHC members. They are:

- *S. 1333, the Tribal HUD-VASH Act of 2017* (Sen. Tester) which would: provide rental assistance and supportive services for homeless or at-risk Indian veterans residing in Indian areas; improve the availability and cultural suitability of VA case management services for homeless or at-risk Indian veterans residing in Indian areas; mandate federal agencies to work cooperatively to better meet the needs of Indian veterans and tribal communities; and ensure program accountability through Congressional reporting. The bill has been reported out of the Senate Committee on Indian Affairs and Mr. Walters expects that the full Senate will take it up soon.
- *S. 2270, the Mitigating the Methamphetamine Epidemic and Promoting Tribal Health Act (Mitigating METH Act)* (Sen. Daines) which would: broaden the eligibility for funding to fight the opioid epidemic from state governments to also include tribal governments; increase the amount authorized for such programs; and broaden tribes' ability to use these funds to also authorize efforts to combat the use of methamphetamine and other substances.
- *S. 2489, the Tribal Food and Housing Security Act* (Sen. Heitkamp) which is a collection of provisions which many in Indian Country would like to see included in the coming reauthorization of the Farm Bill. Importantly, this bill includes improvements to the U.S. Department of Agriculture's (USDA) Section 502 loan program. Further, the bill would provide five percent tribal set-asides in all of USDA's "Title V" housing programs.

c. FY 2018 and FY 2019 Appropriations.

Charts comparing the (annualized) FY 2018 funding levels and the Trump Administration's proposed budget for FY 2019 are attached.

d. Improving Borrowing Opportunities.

One attendee further explained the improvements to the 502 program envisioned in Sen. Heitkamp's bill and why they are necessary. One of the current problems with the 502 program is it is not reaching Indian Country. USDA does not have enough boots on the ground or expertise in Indian Country, the attendee explained. For example, she reported that last year that USDA made 7,000 loans under the 502 program but only 23 of them were for borrowers in Indian Country. Right now, she explained, Native CDFIs can provide expertise with Indian Country and reach into Indian Country. Further, Native CDFIs can provide borrowing assistance, education, and community outreach. The idea in Sen. Heitkamp's bill is to make Native CDFIs eligible to borrow from USDA, then they in turn will lend to Indian Country. This is currently taking place in South Dakota as a pilot project but this legislation would scale the concept up and make it available

anywhere. She also reminded attendees that the BIA's Housing Improvement Program (HIP) funds can be used for closing cost and down payment assistance. She also urged attendees to take a closer look at the Veterans Administration's tribal loan program, suggesting that improvements could be made to streamline some of the administrative aspects of the program.

e. Amendments Being Considered for Pearce Bill

Another attendee reported that work continues with Rep. Pearce's office to craft amendments to his NAHASDA reauthorization bill (H.R. 3864), which has passed out of Committee. One amendment would address tribal court jurisdiction for the 184 loan program, to ensure that tribal court jurisdiction is specifically provided for. The other amendment would address flood mapping and the national flood insurance program to provide tribal-state parity.

IV. Updates from Capitol Hill

a. Rep. Gwen Moore (D-WI)

Representative Moore framed her comments by sharing the honor that she has had of fighting alongside Indian Country on issues such as NAHASDA reauthorization, the Violence Against Women Act (VAWA), tax reform, and infrastructure development, among many others. She observed that while the federal government's political priorities may change, tribal leaders have remained consistent in advocating for their communities' interests and holding Congress accountable.

Attendees received a candid assessment of NAHASDA reauthorization efforts from the Congresswoman, who expressed frustrated dismay at the ideological opposition the Act has received in regards to its Native Hawaiian provisions. She explained that she was forced to vote against the most recent House version of the bill (H.R. 3864) after the House Committee on Financial Services removed the Native Hawaiian provisions. She shared her view that the Native Hawaiian controversy represents the latest link in a chain of historical attempts to restrict tribal sovereignty that stretches back to the Indian removal policies of the Jackson Administration. She encouraged attendees to support an inclusive NAHASDA reauthorization bill, quoting Dr. Martin Luther King, Jr. in stating, "it is always the right time to do the right thing."

Representative Moore also reaffirmed her commitment to strengthening tribal protections under VAWA, proclaiming, "we will not leave a single woman behind" during the VAWA reauthorization process. The current authorization will expire on September 30, 2018. Under existing law, tribal governments do not have criminal jurisdiction over non-Indian perpetrators of sexual assaults and of child or elder abuse in Indian Country. Tribal leaders, advocates, and women's rights organizations are working with Congress to close this gap in the upcoming reauthorization to better protect Native women and children.

b. Rep. Don Young (R-AK)

Representative Young echoed his colleagues' comments regarding the need for a unified Indian Country position on the NAHASDA reauthorization. He urged tribal leaders to resist efforts to divide American Indian and Alaska Natives against Native Hawaiians, sharing his view that, "collectively you'll get things done, [but] individually you'll get nothing." He reported that the House – led by Representatives Steve Pearce (R-NM), Gwen Moore, and Tom Cole (R-OK) – is working to find a legislative vehicle to move a reauthorization bill forward with increased funding and the Native Hawaiian provisions added back in.

Representative Young concluded his remarks with a thoughtful reflection on the contentious political climate that he sees gripping America. He stated that conditions have reached a critical juncture where, "if you look at [the patterns of] history, we are standing on ripe ground for tyranny." He urged attendees not to take their political freedoms for granted, but instead to fully engage in the democratic process; for example, by holding political candidates accountable for addressing substandard housing needs through the power of the Native vote in local, state, and federal elections.

c. Sen. Heidi Heitkamp (D-ND)

Senator Heitkamp began with a frank acknowledgment of the lack of progress Congress has made in addressing Indian housing issues. She stated that every year she addresses the NAIHC Conference, and every year she gives the same remarks about unfulfilled promises. She discussed the need to leverage federal funds with other resources to maximize tribal resources pending NAHASDA reauthorization. Senator Heitkamp also shared her lack of confidence in the ability of Hunter Kurtz, nominee for Director of the Office of Public and Indian Housing, to carry out the recommendations of the HUD Indian housing reports.

d. Sen. Elizabeth Warren (D-MA)

Senator Warren described the legal and moral obligation that the federal government owes to provide safe and affordable housing to tribal nations. According to the January 2017 HUD housing report, Indian Country has an unmet need of approximately 68,000 housing units. Senator Warren, however, reported that other estimates place the amount of unmet need closer to 200,000. She expressed concern about Hunter Kurtz's ability to serve as a strong advocate for these needs. She pledged to continue to question Mr. Kurtz on the actions he would take to advance both sides of his portfolio within the Office of Public *and* Indian Housing.

Senator Warren also shared her perspective that, at heart, the controversy surrounding the NAHASDA reauthorization is about ideological disagreements over tribal sovereignty and self-determination rather than the availability of funds. She stated that efforts by the Trump Administration to characterize programs such as the Indian Housing Block Grant (IHBG) as unconstitutionally race-based are "dead wrong as a

matter of law and public policy." She thanked tribal leaders and tribal housing representatives for consistently returning to Washington, DC, to educate federal officials on the government-to-government relationship and insist that the federal government fulfill its obligations to tribal nations.

e. Sen. Lisa Murkowski (R-AK)

Senator Murkowski discussed the chronic need for basic services that manifests itself across Indian Country in the form of substandard housing, antiquated infrastructure systems, and insufficient utilities. In Alaska, she reported that the high cost of housing has contributed to severe overcrowding in many Native villages. As an example, Senator Murkowski shared a situation in which almost a dozen people were living a two-bedroom house in Alaska. She explained that family had to sleep in shifts so that children could be rested for school and adults prepared for work. She stated that the prolonged exposure to inadequate housing facilities has the potential to affect the health, welfare, and stability of the entire family. She, therefore, reaffirmed her support for reauthorizing NAHASDA with an increase in funding to address unmet needs.

f. Sen. Mike Rounds (R-SD)

Senator Rounds also discussed the close connection between housing and other socioeconomic conditions in Indian Country. He reported that he would look to the poorest counties in his state on ways to improve economic growth and infrastructure development. He emphasized that consultation with tribal leaders is key to understanding the complex challenges facing Indian Country.

g. Sen. Mazie Hirono (D-HI)

Senator Hirono thanked the NAIHC and tribal leaders for their support of Native Hawaiians. She observed that the need for affordable, quality housing affects all indigenous peoples – from Hawaii to Alaska to the Lower 48. She cautioned "if we [as Indian Country and Congress] are not together, these programs can be torn apart." Senator Hirono reaffirmed her commitment to work on behalf of marginalized and underrepresented communities, immigrants, and "Dreamers" under the Deferred Action for Childhood Arrivals program.

V. *Conclusion*

The next NAIHC meeting is the joint annual convention and trade show with Amerind, to be held in San Diego, CA, May 30 through June 1 at the Marriott Marquis San Diego Marina. The NAIHC Legislative Committee will meeting in person on the first day of the convention. There will also be elections for a new NAIHC Chair. If you have any questions about this memorandum or the attachments, please contact Ed Clay Goodman at egoodman@hobbsstrauss.com or by phone at (503) 242-1745.