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## MEMORANDUM

March 27, 2018

To: Tribal Housing Clients

From: Hobbs, Straus, Dean & Walker, LLP

Subject: ***FY 2018 Omnibus Enacted; Contains \$100 Million Indian Housing Boost but Changes to Other Indian Housing Programs***

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On Friday, March 23, 2018, the President signed the FY 2018 Omnibus spending bill into law, thus averting a government shutdown. The Omnibus funds the entire federal government for the remainder of the fiscal year (through September 30, 2018) and provides billions of dollars in increases for both domestic and defense discretionary spending. These increases are possible because earlier this year, Congress reached a deal to increase the discretionary spending caps for both FY 2018 and FY 2019, creating room for targeted spending increases on certain priorities.

This memorandum briefly summarizes those provisions of the FY 2018 Omnibus that impact Indian housing programs. Most notably for Indian housing, the FY 2018 Omnibus contains a new, \$100 million competitive grant program for which Native American Housing Block Grant recipients are eligible.

**1. Tribal HUD-VASH.** The FY 2018 Omnibus provides \$5 million for rental assistance and associated administrative fees for the Tribal HUD-VASH program to support renewal grants to recipients who received assistance under prior appropriations acts under the Tribal HUD VASH program. This represents a \$2 million decrease below FY 2017. Further, the FY 2018 Omnibus does not contain the bill language from FY 2017, which: (1) provided that any amounts remaining after renewal assistance was awarded could be available for new grants; and (2) that funds were to be awarded based on need and administrative capacity. Instead, the FY 2018 Omnibus adds the following provision: "... the Secretary [of HUD] may reallocate, as determined by the Secretary, amounts returned or recaptured from awards under prior acts;". We anticipate, however, that the Tribal HUD-VASH legislation will be adopted this year and will address funding issues.

**2. Native American Housing Block Grants (aka “Indian Housing Block Grants” or “IHBG”).** The FY 2018 Omnibus provides \$655 million for the IHBG formula funding program (to remain available until September 30, 2022). This amount represents a \$1 million increase above FY 2017.

- a. *Training and Technical Assistance.* The FY 2018 Omnibus revises and combines certain provisions from FY 2017 as follows. In FY 2017, the bill language specified that of the amount provided for the IHBG, \$3.5 million was to be contracted for assistance for national or regional organizations representing Native American housing interests for providing training and technical assistance to Indian tribes and TDHEs, and another \$3.5 million was to support the inspection of Indian housing units, contract expertise, training and technical assistance. In FY 2018, those provisions were replaced by a single provision which specifies that \$7 million is for providing training and technical assistance to Indian housing authorities and TDHEs, to support the inspection of Indian housing units, contract expertise, and for training and technical assistance. The FY 2018 Omnibus continues bill language which specifies that of the amounts provided, not less than \$2 million shall be available for a national organization as authorized under section 703 of NAHASDA (the funding that goes to NAIHC).
- b. *Title VI Loan Guarantee.* The FY 2018 Omnibus continues bill language from previous years which specifies that \$2 million of the total amount provided for block grant funds is to be made available for the cost of guaranteed notes and other obligations as authorized by title VI of NAHASDA. The FY 2018 Omnibus continues language specifying that the \$2 million is available to subsidize the total principal amount of any notes and other obligations but sets the limit at \$17,391,304. For FY 2017, the limit was set at \$17,857,142.
- c. *Unexpended Funds.* The FY 2018 Omnibus does not continue language from FY 2017, which provided penalties for any block grant recipient that received \$5 million or more per year in formula funds and had accrued an unexpended balance of funds that equaled three years' worth of formula funds. However, we note that essentially this same provision was incorporated into the NAHASDA regulations as part of the last round of negotiated rulemaking (see 24 CFR 1000.342), thus rendering legislative language unnecessary.
- d. *New Competitive Grant Program.* Most notably, the FY 2018 Omnibus contains a new, \$100 million (to remain available until September 30, 2022) competitive grant program for which Native American Housing Block Grant recipients are eligible to apply. The FY 2018 Omnibus specifies that in awarding these funds, the Secretary of HUD "shall consider need and administrative capacity and shall give priority to projects that will spur construction and rehabilitation." (Up to one percent of these funds may be

transferred to HUD "for the necessary costs of administering and overseeing the obligation and expenditure of these funds.)

**3. Section 184 Loan Guarantee Fund.** The FY 2018 Omnibus provides only \$1 million for the cost of section 184 guaranteed loans. This represents a \$4.5 million *reduction* from the FY 2017 level. The FY 2018 Omnibus specifies that these funds are available to subsidize a total loan principal of up to \$270,270,270. For FY 2017, the limit was set at \$1,341,463,415—a dramatic difference.

**4. Housing for Professionals and Skilled Workers.** Another difference is that in FY 2017, there was a separate amount of \$1,727,000 available for the costs of section 184 guaranteed loans specifically issued to tribes and Indian housing authorities for the construction of rental housing for law enforcement, healthcare, educational, technical and other skilled workers, to subsidize a loan principal amount of up to \$421,219,512. The FY 2018 Omnibus does not contain this provision.

**5. Native Hawaiian Housing Block Grant.** The FY 2018 Omnibus provides \$2 million for the Native Hawaiian Housing Block Grant program, to remain available until September 30, 2022 (the same amount provided in FY 2017). The difference is that the FY 2018 Omnibus includes the following new language:

*Provided*, That notwithstanding section 812(b) of such Act, the Department of Hawaiian Home Lands may not invest grant amounts provided under this heading in investment securities and other obligations; *Provided further*, That the language under the first proviso under the heading "Native Hawaiian Housing Block Grant" in the Department of Housing and Urban Development Appropriations Act, 2015 (Public Law 113-235) is amended by striking "Hawaii-based"; *Provided further*, That amounts made available under this heading in this and prior fiscal years may be used to provide rental assistance to eligible Native Hawaiian families both on and off the Hawaiian Home Lands, notwithstanding any other provision of law.

**6. Community Development Fund.** Of the total amount provided for the Community Development Fund, the FY 2018 Omnibus specifies that \$65 million is to be for grants to Indian tribes under the Indian Community Development Block Grant (up to \$4 million of which may be used for "emergencies that constitute imminent threats to health and safety"). The FY 2018 amount represents a \$5 million increase above FY 2017.

**7. Community Development Loan Guarantees.** Under Section 502 of the Congressional budget act, there is a provision to guarantee loans under Section 108 of the Housing and Community Development Act. The guarantee for FY 2018 is up to \$300,000,000, the same amount as FY 2017.

**8. HUD General Provisions – Allocation of Block Grant Funds to Native Alaskan Housing Block Grant Recipients.** The FY 2018 Omnibus continues the following bill language from previous years: "The Funds made available to Native Alaskans under the heading 'Native American Housing Block Grants' in title II of this Act shall be allocated to the same Native Alaskan housing block grant recipients that received funds in fiscal year 2005." This language has been in the annual appropriations bills since 2006.

**9. USDA Rural Development Section 502 Single Family Direct Loan.** This program was funded at \$1 billion in FY 2017, and was increased to \$1.1 billion in FY 2018. This is not a tribal-specific grant program, although tribal families are eligible. The FY 2018 omnibus directs USDA to be “innovative” in order to improve the program in tribal communities.

If you have any questions regarding this memo, please contact Ed Clay Goodman at (503) 242-1745, or by email at [egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com).