



MEMORANDUM

April 6, 2018

To: Housing Clients

From: Hobbs, Straus, Dean & Walker, LLP

Re: *NAIHC Legislative Committee Meeting*

This memo reports on the monthly NAIHC Legislative Committee meeting, which was held on April 5, 2018 (by teleconference). NAIHC Board Member and Legislative Committee Chair Gary Cooper and NAIHC Executive Director Tony Walters presided over the call. Mr. Walters stated that he has completed the one-year restriction on lobbying that he was subject to following his prior position, and he will be scheduling many upcoming meetings on the Hill.

I. Tribal Housing Legislation Update

a. Tribal HUD-VASH Legislation:

There are two bi-partisan efforts to authorize the Tribal HUD-VASH program moving forward with support in the House and Senate. The Senate version is the Tribal HUD-VASH Act (S.1333), introduced by Senator Tester (D-MT). S.1333 has been reported out of the SCIA. Mr. Walters has heard that S.1333 may be passed by the Senate by unanimous consent, without a floor vote. Several (unnamed) senators, however, have expressed concerns about passing the bill by unanimous consent, but Mr. Walters believes these concerns stem from the senators simply trying to get up to speed on the bill, and about whether sunset provisions on authorization need to be included to control the future costs of the bill. NAIHC is working with the senators through these objections, and is somewhat hopeful that S.1333 will be passed by unanimous consent.

The House version is part of Representative Pearce's NAHASDA reauthorization bill (H.R. 3864), but will likely move separately due to a lack of movement on NAHASDA. The Tribal HUD-VASH authorization within the bill has broad support.

b. NAHASDA Reauthorization

Mr. Walters stated that there is nothing new to report on NAHASDA reauthorization. Congress has been out of session for a Spring Break holiday. As this is an election year, members of Congress will be taking off more time than usual to

campaign, and Congress shuts down in August. Now that Congress is back in session, NAIHC will learn a lot more about options for reauthorization over the next few weeks.

The House bill (H.R. 3864), sponsored by Representative Pearce, has been moved out of Committee, but there has been no word yet on when it will come to the floor for a vote. H.R. 3864 includes a \$650 million appropriations cap and does not include Native Hawaiian provisions.

There are two Senate bills still in the SCIA. Senator Hoeven's BUIILD Act, S.1275, which is a streamlined version of reauthorization, would reauthorize NAHASDA and the Section 184 loan program for seven years. It contains some limited provisions to improve NAHASDA and does not cap the authorization at \$650 million, but it does not contain all of the changes proposed by the Pearce and Udall bills. It also leaves out the Native Hawaiian provisions. Senator Udall's more comprehensive reauthorization bill, S. 1895 is similar to H.R. 3864, and would contain the current law's authorization language for funding: "appropriated such sums as may be necessary...". There has been no movement on either bill, and there has been no word from the SCIA as to how the Committee plans to move forward.

c. FY 2018 Omnibus Appropriations Bill

NAIHC recently sent out a Tribal Housing Programs Funding Chart explaining how the FY 2018 Omnibus Appropriations bill affects various tribal housing programs. Congress was about six-months behind schedule when it finally passed the bill, which was signed by President Trump on March 23, 2018.

i. Tribal HUD-VASH

Tribal HUD-VASH funding was cut from \$7 million to \$5 million. The funds are to be used for rental assistance and administrative fees for the program to support renewal grants to recipients who received assistance under prior appropriations acts under the program. NAIHC will send a survey to the 25 participating tribes about how this cut will affect them, will bring back that information back to Congress for consideration for the 2019 funding cycle. The survey will be sent out today or tomorrow.

A participant from the VA who was on the phone said that the issue with funding has been the national average of only 77% usage of funds. Mr. Walters said that from NAIHC's initial discussions with HUD over the specific reasons for the funding reduction, slow utilization rate of funding was indeed the reason. Mr. Walters believes that HUD may be waiting on the balance of funds to be spent, in an effort to get the funds out of the door, and then will bump funding back up once the prior funding is spent down.

Other participants noted that the utilization rate is likely affected by the fact that HUD-VASH funds cannot be used in connection with Formula Current Assisted Stock

(FCAS) under the Indian Housing Block Grant (IHBG) program. Some recipient tribes have had trouble drawing down funds without enough available units to offer. Mr. Walters noted that NAIHC and others had pushed for adding a provision allowing for funding to be used in connection with FCAS units, but this provision did not make it into the bill. One participant noted that HUD's explanation about HUD-VASH funding was cut off at the legislative conference because another speaker needed to begin. NAIHC will check and see if this update can be provided at the upcoming NAIHC/Amerind Annual Convention in May (see below for additional information about the convention).

ii. IHBG

The FY 2018 appropriation provides \$655 million for the IHBG formula funding program (to remain available until September 30, 2022). This amount is a \$1 million increase above FY 2017. The FY 2018 appropriation also contains a new, separate \$100 million competitive grant program for which IHBG recipients are eligible to apply. The bill specifies that the HUD Secretary "shall consider need and administrative capacity and shall give priority to projects that will spur construction and rehabilitation." There is not much additional information about how the money will be allocated under the competitive grant process. NAIHC has reached out to HUD to discuss the parameters for application criteria, and will be following up with Heidi Frechette. NAIHC will continue to work with HUD to make sure the timeline for application and the requirements are clear, and plans to send out this information within several weeks.

Participants expressed concerns about the competitive nature of the funding. Mr. Walters said that he's not sure who wanted to make the funding competitive, but it's typical of the Republican members of the SCIA to take this approach, which allows money to be spent more quickly.

Other participants expressed concern that this funding will only help those tribes that are "shovel-ready" versus those without the immediate necessary administrative capacity. Mr. Walters agreed and said that this funding is likely an agreed-upon compromise. While there is a significant recognition of tribal housing need, Congress wants to deploy resources as available on a one-time basis, as it increasingly looks like less funding may be available in future. Congress wants the funding to appear to be a one-time option, rather than setting an expectation that this will be the funding level to rely on going forward.

iii. ICDBG

The FY 2018 appropriation for the Indian Community Development Block Grant (ICDBG) represents a \$5 million increase above FY 2017, which was not as much as NAIHC had hoped for, but which will still be helpful. The Native Hawaiian Block Grant remains the same at \$2 million.

iv. Section 184 Loan Program

Section 184 was only funded at \$1 million, reduced by \$4.5 million from last year. HUD has communicated that the reason for the extreme reduction is because the loan program is a revolving fund, and as program loans have been repaid, there is no longer a need for the same level of new funding each year. Mr. Walters said that this is a concerning cut, and NAIHC will monitor whether HUD's communication that the same amount of funding will be available is correct. Participants expressed frustration in the cut, noting that applicants are still waiting for loan funding to go through based on the challenges for tribes lending on trust land (which has not been adequately addressed by HUD).

HUD is currently undertaking regional consultation meetings on revisions to the Section 184 program regulations. Participants expressed their disappointment in how the consultation meetings on revisions to the regulations have been conducted so far.

One participant said that the regulation revision process seemed to be fast-tracked, and is not providing adequate time for HUD to really listen to tribes and find solutions, especially to the issues around lending on trust land. One participant noted that lending on military land does not have the same issues as trust land, even though both are federal land. The revision process shouldn't just be a quick process after 25 years of problems. Participants expressed that tribes need a fair opportunity to fully negotiate regulations that make sense.

NAIHC has drafted a comment on HUD's proposal to revise the Section 184 regulations, which we have attached to this memorandum. This draft comment will continue to be updated based on member feedback, but tribes can use it as a template. Currently, the comment does not include a call for full negotiated rulemaking, but NAIHC will consider adding that request to the comment.

These are the upcoming consultation dates:

- The United Native American Housing Association (UNAHA) Annual Meeting at Holiday Inn Lakewood in Lakewood, CO, April 9, 2018
- An Association of Alaska Housing Authorities' (AAHA) meeting and webinar at AAHA offices in Anchorage, AK, April 9, 2018
- The Northwest Indian Housing Association (NWIHA) Quarterly Meeting at Coeur d'Alene Resort Casino in Worley, ID, April 17, 2018
- The Southern Plains Indian Housing Association (SPIHA) Spring Meeting at the Hard Rock Hotel in Catoosa, OK, April 19, 2018
- The Tribal Self-Governance Annual Consultation Conference at the Albuquerque Convention Center in Albuquerque, NM, April 22-26, 2018

- May 3, 2018 in Chicago, IL. This date was just added, and NAIHC does not yet know the final location or time of the consultation. This date has not yet been added to HUD's website.

v. *USDA Rural Development Section 502 Single Family Direct Loan:*

This program funding was increased to \$1.1 billion from \$1 billion in FY 2017. This is not a tribal-specific grant program, although tribal families are eligible. The program assists low and very-low-income applicants obtain decent, safe and sanitary housing in eligible rural areas by providing a no money down home loan, on or off trust lands. The USDA is considering working with Native Certified Community Development Financial Institutions (NCCDFI) to allow re-lending under the Direct Home Program and allow local partners to manage the lending. The USDA may attempt to conduct a demonstration project to determine how successful the approach would be. Mr. Walters is meeting with Mike Andrews next week and will discuss this issue.

d. *FY 2019 Budget*

The Administration has not yet released its budget for FY 2019. The process for developing the relevant appropriations bills is behind schedule.

II. **NAIHC/Amerind Annual Convention**

Mr. Walters noted that registration is open for the NAIHC/Amerind Annual Convention, to be held in San Diego from May 30 through June 1, 2018. A golf tournament will be held as a fundraiser. An in-person Legislative Committee meeting will be held on May 31, likely at 4:00 P.M. (the time is still being finalized). The meeting will include an election for the NAIHC chairperson. If members cannot attend, they should fill in proxy voting forms (available on NAIHC's website) so that they can vote on any resolutions and for a chairperson. Mr. Cooper asked those members participating in upcoming regional meetings to check with their members who were not on today's call to remind them to give their proxy to another person in the event that they cannot attend, so that NAIHC will have a quorum for the meeting. The proxy form provides the option for a general or a specific proxy.

III. **Conclusion**

The next Legislative Committee meeting will be held by teleconference on Thursday, May 3, at 1:30 EST.

If you have any questions about the items in this memorandum, or if you would like assistance preparing or submitting comments on revisions to the Section 184 regulations, please do not hesitate to contact Edmund Clay Goodman at EGoodman@hobbsstrauss.com or by phone at (503) 242-1745.