



516 SE Morrison Street
Portland, OR 97214

T 503.242.1745
F 503.242.1072

HOBBSSTRAUS.COM

MEMORANDUM

December 20, 2018

To: Housing Clients

From: Hobbs, Straus, Dean & Walker, LLP

Subject: ***Indian Energy Bill with Weatherization Assistance Provisions Signed by the President; HUD VASH Bill Pulled From House Suspension Calendar***

1. Indian Energy Bill Signed into Law; Contains Provisions for TDHEs

On December 10, 2018, the House of Representatives, under an expedited procedure called "Suspension of the Rules", passed S. 245, the "Indian Tribal Energy Development and Self-Determination Act Amendments of 2017." (S. 245 had been previously passed by the Senate.) The President signed the bill into law on December 20, 2018. Among a range of provisions designed to remove hurdles to Indian energy development, the legislation also contains provisions to simplify the process for by which tribal organizations (specifically including TDHEs) can receive direct funding from the Department of Energy (DOE) Weatherization Assistance Program (WAP). These provisions are the subject of this memo.

Context. S. 245 was sponsored by Senate Committee on Indian Affairs Chairman Hoeven (R-ND) and had been approved by the Senate by "Unanimous Consent" on November 29, 2017. S. 245 is not a controversial bill but since 2011, it had been considered by the Senate each Congress, only to bog down in the House and then have to be reintroduced at the start of each new Congress. Passage of S. 245 is significant for Indian Country.

About WAP. The DOE website explains that WAP reduces energy costs for low-income households by increasing the energy efficiency of homes while ensuring the health and safety of residents. Individuals are automatically eligible to receive weatherization assistance from their state if they receive Supplemental Security Income or Aid to Families with Dependent Children. In other cases, states give preference to: people over 60 years of age; families with one or more members with a disability; and families with children (in most states).

Current Requirements for Direct Funding. WAP funds are distributed by the Secretary of Energy to the states, which in turn, provide weatherization assistance to low-income individuals (including low-income tribal members) residing in that state. In order for a tribal organization to be directly eligible for funds to provide weatherization assistance, they must submit an application. The statute currently requires that the

Secretary of Energy shall provide such funds directly to a tribal organization (or entity that the Secretary determines has the capacity to provide such services) only if the determination is made that: (1) the low-income members of an Indian tribe are not receiving benefits that are equivalent to the assistance provided to other low-income persons in such state; and (2) the members of such tribe would be *better* served by means of a grant made directly to provide such assistance. Likely, it is an onerous process for tribal organizations to prove that both requirements are met.

Changes Made by S. 245. Section 203 of S. 245 amends the Energy Conservation and Production Act of 1976 (42 U.S.C. § 6863(d)) to dramatically simplify this application process for direct funds. While a tribal organization must still submit an application, section 203 removes the first requirement, amends the second requirement and makes the second requirement it much easier to prove. Under section 203 there is now the "presumption" that the low-income members of the applicable tribe would be *equally or better* served if the tribal organization requesting the grant is: "a tribally designated housing entity (as defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103)) that has operated without material audit exceptions (or without any material audit exceptions that were not corrected within a 3-year period)". This change will empower more tribally designated housing entities to apply for direct WAP funds on behalf of their low-income tribal members.

2. HUD VASH Bill Pulled from House Suspension Calendar

The Senate-passed HUD VASH bill had initially faced some procedural obstacles in the House, which had slowed its momentum and dimmed its prospects for passage this session. Last week, however, it was reported that the bill had been placed on the House's "suspension" calendar, meaning that it would have a House Floor vote under suspension of the normal rules, a maneuver reserved for non-controversial bills to speed their Floor consideration. Then, this morning, we learned that the HUD VASH bill has been pulled from the suspension calendar. From the information we have received, which we still need to verify, it appears that some Republicans on the House Financial Services Committee insisted that the bill have a seven-year sunset provision, due to their overall opposition to permanent reauthorizations. Rather than submit to this demand, the bill's proponents (including Senator Jon Tester, D-MT), indicated that they would move forward with the bill again next session, because they view the incoming Democratic House majority as likely to provide a more favorable environment for this legislation. Given the very short time left for Congress in the current session, it is highly unlikely that the bill will be passed this session.

If you would like more information on this legislation, please contact Ed Clay Goodman at (503) 242-1745 or by email at egoodman@hobbsstrauss.com