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## MEMORANDUM

April 8, 2019

To: Housing Clients

From: HOBBS, STRAUS, DEAN & WALKER, LLP

Re: *NAIHC Legislative Committee Meeting; HUD Releases New Draft of Section 184 Loan Guarantee Regulations for Tribal Comment*

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This memo reports on the monthly NAIHC Legislative Committee meeting, which was held on April 4, 2019 (by teleconference), as well as on HUD's release of a new draft of the Section 184 Loan Guarantee Program Regulations (released on April 5).

### 1. NAIHC Legislative Committee Meeting

NAIHC Executive Director Tony Walters presided over the brief call. The turnout on the call was low (several regions had no representatives on), but there was a staffperson from Senator Hoeven's office, Chair of the Senate Committee on Indian Affairs.

#### a. NAHASDA Reauthorization

Mr. Walters began with a discussion of NAHASDA reauthorization, noting that this is NAIHC's top priority. They are working closely with Representative Heck (D-WA) as well as with House Financial Services, to figure out the best form of the bill to move forward. The initial plan was to have Gwen Moore (D-WI) sponsor NAHASDA reauthorization, who has long been an advocate and an ally of Indian Country housing. However, Representative Moore has been reassigned from the House Financial Services Committee to the Ways and Means Committee, so NAIHC is looking for a new sponsor. They are also working closely with Senate Committee on Indian Affairs lead staffer Mike Andrews about strategy on the Senate side.

NAIHC does not yet have draft bill language. They are still taking input from the various regions on language that should be in the new bill. NAIHC is working on the process for getting input and developing a bill, and that process will continue with meetings during the Legislative Conference as well as at the Annual Meeting. At this juncture, Mr. Walters is not focusing his Hill meetings on the specifics of a new NAHASDA bill. NAIHC would like to review the regional consensus priorities for the new bill, and then hold a larger discussion with the membership prior to discussing on the Hill.

b. HUD-VASH

HUD-VASH has been reported out of the Senate Committee on Indian Affairs, but has been in a hold pattern since then. The goal is to get it to the Senate floor for a vote (or approval by unanimous consent), but proponents first want to address any issues the House might have with the bill before finalizing the vote in the Senate, so that it does not have to come back to the Senate for another vote.

There had been some discussion about adding other Native Veterans' issues to HUD-VASH (such as needed reforms to the VA Native American Direct Loan program), but NAIHC has learned there is no appetite for floor amendments in the Senate that would expand the scope of the bill. The Senate proponents want to pass a bill that looks essentially like the bill that passed last year, so that it can get approved.

There has been some discussion about whether HUD-VASH vouchers could be used toward homebuyer payments (like Section 8), but since these vouchers are time-limited, it probably would not work.

c. American Housing and Economic Mobility Act

Senator Elizabeth Warren (D-MA) has introduced a bill entitled the American Housing and Economic Mobility Act. It is a broad and substantial piece of legislation, dealing with housing and economic issues. There are two issues of interest for tribes. First, the bill if passed would provide authorization for a substantially larger Indian Housing Block Grant appropriation. Second, it would remove the restriction in NAHASDA that prevents tribes from contracting with HUD for Section 8 vouchers (NAHASDA Sec. 503). It is not likely that the bill in its current form will make any progress in the Senate, which is controlled by Republicans.

d. Appropriations

Mr. Walters began the discussion of appropriations with the \$100 million in additional IHBG funds appropriated in each of FY 2018 and 2019. The IHBG "competitive" funding (\$100 million each for FY 2018 and 2019) will likely be made available through a single NOFA (for \$198 million in total; the additional \$2 million will likely be expended on staffing, administration and oversight). It is in the final approval stages and should be available in the "late Spring/early Summer." Mr. Walters indicated that NAIHC has suggested that it may be better to have two separate NOFAs, and to issue the FY 2018 NOFA first. If any problems arise with administration of the process, they can be identified and fixed in the FY 2019 NOFA.

On March 19, HUD published in the Federal Register a "60-day notice of proposed information collection: Indian Housing Block Grant Program Information Collection." This notice includes an overview of proposed information in relation to the IHBG Competitive Awards and gives some insight into the application components that may be required. The notice indicates that the competitive funding process will be "project-focused" and similar to how ICDBG is administered.

Mr. Walters then addressed FY 2020 appropriations. The President's proposed budget for FY 2020 includes a reduction in the IHBG appropriation to \$598 million. Thus, the Formula Response Forms going out for FY 2020 will be based on this amount. However, the final amount approved by Congress is likely to be substantially different (for the last two years, the Administration also proposed a \$600 million IHBG appropriation; each year Congress passed an appropriation for \$655 million, with an additional \$100 million to be allocated via the "competitive" process discussed above). Similarly, the Administration has proposed zeroing out the ICDBG for the past two years, as it has again this year. In each of the last two years, Congress restored ICDBG funding. The one difference is that this year there is no budget agreement in place, which was the basis – during the last two years – of Congress restoring funding that the Administration wanted to cut. It is likely, therefore, that we will see Continuing Resolutions (once the new Fiscal Year begins) until a Budget Agreement is in place.

e. General Comments

Senator Thune (R-SD) has been meeting with TDHEs and CDFIs in his state. He is interested in doing research into various issues with the BIA that have led to delays in financing for homeownership in Indian Country. In particular he is looking at BIA delays in issuing Title Status Reports, and in approving leases and leasehold mortgages. The Senator intends to keep the pressure up on the BIA until it improves in these areas.

The NAIHC Annual Convention and Trade Show will be held in Denver from May 6 through May 9. The next Legislative Committee meeting will be held on Monday May 6, in the afternoon. The luncheon will be held on the last day. The middle day will be reserved for members' meetings for both NAIHC and Amerind. The deadline for submitting resolutions to NAIHC for the convention is April 24, 2019.

Also, HUD ONAP will be carrying out further consultation on the Section 184 regulations at the convention. There will be time set aside for that consultation (Wednesday, May 8, at 1:45 to 3:15 PM). See further details below.

## **2. Section 184: New Set of Draft Regulations Released for Tribal Comment**

On April 4, 2019, HUD ONAP issued a "Dear Tribal Leader" letter and the new set of Section 184 draft regulations (both are attached). This draft is still the Tribal consultation draft. The regulations will go through another round of Tribal comments and consultation before HUD publishes a draft version for public comment in the Federal Register. The main points from the Dear Tribal Leader letter are the following:

- A copy of the draft will be posted to the Consultation on Section 184 Regulations webpage.
- Tribes will have 60 days *from the date of the letter* to submit comments on the proposed rule. **The due date is therefore June 3, 2019.**

- Comments on the proposed rule can be submitted by email to: [184consultation@hud.gov](mailto:184consultation@hud.gov).
- Alternatively, Tribes may submit comments by postal mail to:

Krisa Johnson, Director, Office of Loan Grantee  
HUD – Office of Native American Programs  
451 Seventh Street SW, Room 4108  
Washington, D.C. 20410.

- Additionally, HUD will be holding a tribal consultation session about the draft proposed rule on Wednesday, May 8, 2019 from 1:45 pm to 3:15 pm. at the Denver Convention Center. The consultation will be held in conjunction with the National American Indian Housing Council (NAIHC) annual meeting; however, one does not have to register for the NAIHC annual meeting to attend the consultation session.
- The letter also notes that: “Since February of 2018, HUD’s Office of Native American Programs (ONAP) has held fourteen tribal consultation sessions: 11 consultation sessions prior to drafting the proposed rule and 3 consultation sessions to review and discuss drafted subparts of the rule. HUD recorded tribal comments during these sessions and considered these comments as it developed the proposed rule. During this time, HUD also accepted comments through an email address dedicated to tribal consultation.”

We will be reviewing the draft regulations and providing a more detailed analysis of the new regulations for you in the next two weeks. *Please let us know if you would like assistance in drafting comments.*

If you have any questions about the items in this memorandum, please do not hesitate to contact Edmund Clay Goodman at [egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com) or by phone at (503) 242-1745.