



## MEMORANDUM

May 10, 2019

To: Housing Clients

From: HOBBS, STRAUS, DEAN & WALKER, LLP

Re: *NAIHC Legal Symposium and Convention*

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NAIHC held its annual convention (along with Amerind) on May 6-9, 2019 in Denver, Colorado. The convention involved an in-person meeting of the NAIHC Legislative Committee, plenary session, a consultation with HUD on the Section 184 regulations, various relevant breakout sessions, and a business meeting.

### *I. Legislative Committee*

#### *a. Update on Appropriations*

NAIHC Executive Director Tony Walters began the meeting by providing an update on the 116<sup>th</sup> Congress, including the status of appropriations, FY2018 and FY2019 grant funding updates, and the FY2020 budget.

The ICDBG FY2018 NOFA was opened late last fall, and then due to the shutdown was extended and closed on March 19. We expect the awards to be announced within the next month or so. The \$100 million competitive grant NOFA is still pending. The paperwork reduction act notice was released on March 18. There is a 60 day wait period for comments on that notice, so the earliest the NOFA can come out is May 19<sup>th</sup>. It will likely be released jointly with the FY2019 \$100 million in competitive funds.

For FY2019, appropriations were passed on February 15<sup>th</sup> as part the deal that ended the government shutdown. It involved the same funding as FY2018: \$655 million in IHBG funding and \$100 million in competitive funding; \$65 million for ICDBG; and \$4 million for HUD VASH (a decrease of \$1 million).

For FY2020, the President has released his budget. As in previous years, the budget proposes significant cuts to HUD and to NAHASDA: cut the IHBG appropriation to \$600 million; no competitive funds; no ICDBG; no Tribal HUD VASH. It does propose to raise Section 184 to \$3 million. As with previous years, we do not expect Congress to use these numbers, but rather to focus on prior years' funding. But one wrinkle is the lack of an overall budget deal in Congress, which is what has allowed for appropriations in prior years. That will need to be negotiated first, which may be difficult. This will likely continue to be negotiated through the fall and winter. NAIHC is continuing to push for higher funding amounts for IHBG,

competitive funding, HUD VASH, and HIP. None of these appropriations have kept up with inflation. For example, Mr. Walters explained that if the IHBG appropriation had kept up with inflation from the original appropriations in the late 1990s, the current appropriation would be \$952 million.

b. NAHASDA Reauthorization

There has yet to be a NAHASDA reauthorization bill introduced. The main focus of the discussion for now among the proponents involves figuring out what kind of bill can be passed. Because of the futility over the past two sessions, where the bill died in the Senate, the folks leading the charge in the Senate (Senator Udall and Senator Hoeven) are focused on process and substance for passing the bill. On the House side, NAIHC is looking for another leader for the NAHASDA reauthorization effort, because Congresswoman Gwen Moore has moved to the Ways and Means committee. NAIHC has been talking with Representative Denny Heck of Washington, and he is likely to take the lead. Some of the new items that will be in a NAHASDA reauthorization bill will likely include: dealing with the IHS sanitation funding bar; raising TDC allowances for energy efficient homes; authorizing Tribal Court jurisdiction for Section 184 foreclosures involving HUD; a set-aside for tribes under USDA Rural Housing; making tribes eligible for Homebuyer Counseling grants; changing the National Flood Insurance Program (NFIP) to protect tribes in the same way states are protected. The bill is still in draft form. NAIHC has provided Rep. Heck with some language. Rep. Heck is using the bill passed in the House previously (the former Rep. Steve Pearce bill) as the starting point, and he and his team are trying to keep as many of the pro-tribal items as possible. They might drop the demonstration project that was in the Pearce bill, since that was an item developed by Rep. Pearce but was not a priority of Indian Country.

The impediment that has held the bill up previously (the Native Hawaiian issue) is still going to be an issue this time around, but Mr. Walters emphasized that the main obstacle is the inability to get floor time in the Senate. A NAHASDA reauthorization bill, if it makes it to the floor, will pass with a substantial bi-partisan vote. There is not a single issue that is an impediment, there are several, and most if not all of these could be resolved if the bill could get a floor vote.

c. Tribal HUD VASH

Tribal HUD VASH passed the Senate last year, but it was held up in the House and thus was withdrawn. The Senate is moving forward with the same bill, and has passed it out of committee. However, they are holding it up to negotiate with the House to ensure that the bill that passes the Senate will pass the House in that form. Mr. Walters is optimistic that it will pass this year. It is not likely that other items that Indian Country wants (such as fixes to the VA Native American Direct Loan program) will be included, because doing so could derail the progress.

d. American Housing and Economic Mobility Act

The American Housing and Economic Mobility Act (S. 787), introduced by Senator Elizabeth Warren and two co-sponsors, and in the House by Representative Richmond and 14 co-sponsors, is a very ambitious bill to fund HUD and address low-income and affordable housing in a variety of contexts, including providing significant funding to HUD. The legislation has two primary tribal provisions: it would reauthorize NAHASDA for 10 years at \$2.5 billion annually; it would remove the restrictions in NAHASDA would allow tribes to again access Section 8 vouchers.

e. Infrastructure

President Trump and the Democratic leadership had a meeting last week and came out with the idea of a \$2 trillion infrastructure plan. There were no details, nor any explanation of where the funds would come from. But the discussions were positive and will likely continue. There may be some significant differences as to the private/public mix in funding.

Rep. Maxine Waters, Chair of the House Financial Services Committee, has introduced a \$92 billion bill specific to housing infrastructure, with a \$1 billion set-aside for IHBG.

f. John Simermeyer, Policy Advisor, Senate Committee on Indian Affairs: Listening Session

The first issue Mr. Simermeyer took up was the question of floor time on the Senate as the mechanism to get NAHASDA reauthorization passed. One of the things that consumes a great deal of floor time are nominations. Otherwise, the other things that get floor time are large bills with high public profiles. Smaller bills dealing with tribes do not seem to be a priority for Senate leadership, unless they have strong bi-partisan support and can be moved via unanimous consent. Thus, while they are working hard on NAHASDA, the prospects are not great. On the other hand, he thinks that the prospects for Tribal HUD VASH is very good.

Mr. Simermeyer asked for input from the NAIHC Legislative Committee on other housing issues (aside from NAHASDA reauthorization). Some of the other programs that he mentioned were the various direct loan guarantee programs, such as the USDA Section 502 and the VA Native American Direct Loan program. The Committee is going to exercise some further oversight over these programs and see if there are legislative work that can be done to improve these programs, including increasing tribal involvement and control. The Committee is also likely to hold a hearing on the Section 184 regulations and process.

He then turned it over to see if there were any questions or comments:

- *Will appropriations for Tribal HUD VASH increase if the bill passes?* Yes, if we can make the program permanent, we think that it will provide justification for appropriators to fund the program at higher levels.

- *What are you doing about pushing HUD to get the \$200 million in competitive funds released? We are concerned that appropriators are going to think that it is the tribes who have not been able to spend the money.* Chairman Hoeven has sent a letter to HUD to get them moving; they responded that they were working on it, but wanted to make sure they got it right. The Chairman wants to hear back as to whether the process comes up with is fair to and helps out Indian Country.
- *Programs that involve other partners or pass-throughs make it difficult to serve tribal members at the grassroots level. The Committee should work on getting rid of those barriers.* The Committee is working on these issues, and intends to carry out oversight on several of these programs. More specific information on what works and what does not work would be very helpful to the Committee.
- *What about serving people who are in the 80%-100% of median income level, who have a great deal of need but cannot receive much assistance under NAHASDA? These are people who help stabilize the reservation (Tribal employees, etc.)* The Committee is looking at other mechanisms for getting help and support to these populations, such as building and expanding the opportunities for Native CDFIs.

## **II. NAIHC Plenary Session**

Chairman Gary Cooper gave the initial opening remarks. NAIHC has been actively engaging HUD ONAP to get the \$200 million in IHBG competitive funding released and into Indian Country. But they have also been successfully working to get Indian housing recognized in other funding sources, to give tribes access to those funds (USDA, HUD VASH, etc.).

Executive Director Tony Walters gave his opening remarks. He just celebrated his second anniversary with NAIHC. Mr. Walters spoke mainly about NAIHC's training and technical assistance. They have been busy, and carried out on-site training at 70 different tribes this year. They are also developing manuals and model documents. They also have the NAIHC Leadership Institute that has been operating for 20 years, training future leaders in Indian housing. Mr. Walters showed a video highlighting their new online training program for "Indian Housing Management" (a series of 11 lessons). The goal is to put all of their courses online, to make them more broadly available. Much of this work is funded by grants, but the main source of funding for NAIHC's training and TA is the annual NAHASDA appropriations, and it is important to continue to obtain that funding.

Ron Ryan, Acting Chairman of Amerind and CEO Derek Valdo, gave the welcome on behalf of Amerind. Based on requests from the membership, Amerind is now offering cybersecurity coverage and automobile fleet insurance. Amerind is proud of its record of being responsive, because anyone who buys insurance from Amerind is an owner of Amerind. This is the fourth year that Amerind and NAIHC have held their annual conventions jointly, the goal of which is to save money for both organizations, as well as for the members, and they have agreed to partner for another two years (the next two conventions will be in Seattle and Hawaii, respectively). Amerind is investing in Indian Country. Amerind has just contributed \$3 million

to a fund to provide seed money to Native-owned CDFIs, which they think will ultimately generate \$100 million in financial benefit and economic development in Indian Country. They ended the presentation by giving NAIHC a \$200,000 contribution.

HUD ONAP Deputy Assistant Secretary Heidi Frechette spoke about the need to rehabilitate aging housing stock. She had a slide show demonstrating how tribes have leveraged IHBG funding to rehabilitate aging stock. She first began noting that the NOFA for the \$200 million in competitive funding will be published “imminently,” and a few moments after she spoke, it was announced that the NOFA had been released today. There are 90 days to submit an application. HUD took great care in developing the NOFA to try to address the needs in Indian Country, specifically to spur new construction and rehabilitation in Indian Country. She also spoke about a new program, the Opportunity Zones Program, created through the 2017 Tax Bill. The goal of this program is to get investors to put their capital gains into distressed communities that have been designated as “opportunity zones.” The longer they invest those funds, the better their tax savings. HUD is in the early stages of developing training and TA to assist tribes to access this program, the goal of which is to provide access to this funding while still preserving tribal sovereignty and cultural integrity. DAS Frechette also spoke about the value of the Indian Community Development Block Grant (ICDBG) program. She gave a couple of examples of tribes carrying out innovative projects with these funds. She also spoke about the value of the Tribal HUD VASH program, and that HUD is supporting the legislation to make the program permanent. Finally, she spoke about the Section 184 loan guarantee program, giving an example of how a tribe can use those funds to develop housing. HUD has been working hard on the new regulations, which are focused on regulating lenders, but also are aimed at getting tribes more involved in the process so that they can step in if a tribal member goes into default and risk of foreclosure.

Legislative Update: Tony Walters gave the legislative update, which was a repeat of the information provided during the Legislative Committee meeting, described above.

Richard Adams, Director of the Innovation Entrepreneurship Center, is an entity that has a long history of working with tribes. Their focus is on renewable energy and energy efficiency. They have 2300 staff, and are funded by a large DOE grant as well as industry investors. They do research into solar, biofuels and geothermal, along with buildings and energy efficiency. They have a substantial partnership with Wells Fargo, including a \$30 million alternative energy technologies incubation program, trying to get these technologies to the marketplace. The area of where they are focused on with tribes is to provide tribes with assets, knowledge, and understanding to be able to put together a grid-scale renewal energy project, on tribal lands, owned and operated by the tribes. They just came back from three listening sessions around the county with tribes, and met with representatives of 120 different tribes.

Stephen Manydeeds, Department of Interior, Chief Division of Energy and Mineral Development (located outside of Denver, CO), provided a slide show on his Division. They provide technical and economic advice services for tribes that are interested in mineral and energy development on tribal lands. They have both grant programs and training and TA programs. Next to gaming, energy is the next highest generator of income for Indian tribes, and

many tribes are moving into the renewable energy sector (wind, solar, hydropower). He also spoke specifically about compressed earth bricks, being developed by tribes as economic development and support for energy efficiency. Tribes who have a certain kind of clay can engage in this kind of development, which also allows tribes to develop building materials for their own housing programs. They are available to talk with you about any opportunities you might have for energy-related economic development. You can reach him at [stephenmanydeeds@bia.gov](mailto:stephenmanydeeds@bia.gov), 720-407-0600.

Cora Ganne of Wells Fargo spoke about Wells Fargo's tribal initiative, which provides grant funding to tribes on an annual basis to support economic development and housing. They are also a significant player in lending in Indian Country to develop housing, through Section 184 and Title VI loan guarantee programs. Wells Fargo was the largest sponsor of the NAIHC/Amerind Convention.

#### Lifetime Achievement Awards.

*George Nolan Lifetime Achievement Award (NAIHC):* Ron Ryan, Executive Director of Metlakatla Housing Authority.

*Virginia Kizer Lifetime Achievement Award (NAIHC):* Dianna Phair, Executive Director of Lummi Housing Authority.

*Wayne Ducheneaux Lifetime Achievement Award (Amerind):* Virginia Spencer, who has worked for tribes, THDEs, NAIHC, and Amerind.

### **III. Amerind Business Meeting**

There were no resolutions considered by the Amerind membership. The main item on the agenda was the election for Chairman of the Amerind Board, which involved some controversy. The Amerind rules for election of the Chair require that any person who wants to be considered for Chair at the annual meeting must be nominated and submit his or her name 120 days prior to the meeting. This year, only one person submitted his name within that timeline: Phil Bush. However, the day before the meeting, two other individuals indicated that they wanted to be nominated from the floor. Vice-Chairman Ron Ryan, who was Acting Chair for the meeting, explained that under the rules, no nominations are permitted from the floor. If someone wants to be nominated from the floor, there first has to be a motion to suspend the rules, which must be approved by a 2/3rds majority vote.

When it was time for a vote, there was a motion made to suspend the rules. There was heated debate whether to do so. The motion did not pass (it received only 30% of votes in favor). There was then a motion to elect Phil Bush by acclamation. The motion passed, although not unanimously, and so by that vote Mr. Bush was elected by acclamation.

Acting Chairman Ron Ryan gave the annual report, which first involved introducing the other speakers, including CEO Derek Valdo, Phil Bush, Amerind's Cell Commission Chairman,

Secretary LeaAnn Brown, and Treasurer Olen Harris. Acting Chair Ryan urged the membership to consider Amerind's automobile fleet insurance, which was developed by a request from the membership at a meeting just like this. Amerind is also reaching out to support the community, including providing a substantial line of credit to the National Indian Child Welfare Association, which needs the financial assistance to fight efforts to undermine the Indian Child Welfare Act. Vice Chair Ryan also spoke of the substantial funds that Amerind has returned to its members from its reserves since 2014, which totaled over \$10 million – all during a period in which Amerind paid out more in claims than it has before due to natural disasters and other calamities. In October 2019, Amerind will be holding its annual risk conference in Albuquerque.

Mr. Bush gave his presentation regarding the Amerind Cell Commission. The Cell Commission is composed of leaders from the three charter tribes of Amerind, as well as appointees from the Amerind membership and two external experts, and is charged with being an oversight body over Amerind Risk. They look at various measurements for the Company to be financial responsible, regulatory compliant, and able to pay out claims. It is the mechanism for Amerind to be self-regulating. Some of the measurements are required by HUD; others are developed by Amerind based on industry standards. Amerind has passed or exceeded every measure put in place by the Board, by HUD, and by the Cell Commission itself.

Mr. Harris gave the Treasurer's report, which also included the report by the auditors, Kevin Brown and Martha Hayes of Larson & Company. Amerind is financially solvent and strong.

CEO Valdo gave his report. He covered a lot of ground concerning Amerind's mission, and how it is trying to expand its reach as a tribally-owned option for insuring Indian Country. He went through a timeline from 2012 of Amerind's accomplishments. He spoke about how they are working to compete against Brown & Brown, their main competition in Indian Country. They are growing faster in areas outside of NAHASDA, in order to finance the NAHASDA work. He is proud that Amerind has returned all its member reserves. He noted that 19 of 32 years, Amerind did not charge enough to cover expenses for the NAHASDA program. Diversification is essential to sustainability of the NAHASDA program. One of the members raised some questions about CEO Valdo's numbers, stating that based on the figures that the auditors provided about costs and expenses, that Amerind netted over \$5 million. CEO Valdo said that due to Amerind's reinsurance, it makes it look like Amerind has more net than actual. This information will be spelled out in more detail in the Annual Report. Further, the auditors are using different numbers, and so these will not line up with the Annual Report. Another member said it looks like Amerind is losing members to Brown & Brown and other competitors. What can be done to bring these members back to Amerind? CEO Valdo talked about how important it is to keep its members to keep premiums lower. Competitors are trying hard to pick off the successful Amerind members, offering them lower rates. But that pulls them out of a risk pool and leaves the members who have higher claims. Amerind is also trying through its safety initiatives to keep claims levels down.

The 2019 Outstanding Member Award (for members who have a lower cost ratio). Many of the Amerind members were below the initial cut-off, and so they tightened the criteria. Even with the tightened criteria, there were 77 outstanding members.

#### **IV. Breakout Sessions**

##### **a. Legal Hot Topics – Federal Indian Law Developments in the Courts and the Implications**

For this breakout session, Geoffrey Blackwell and Robert Dahl, legal counsel for Amerind, presented summaries of some cases they are watching for potential legal implications in Indian Country. Mr. Blackwell began with some comments regarding *Employers Mutual Casualty Co. v. Branch*, a federal district court case in Arizona where, as he explained, the court voiced some criticism of the Ninth Circuit's body of decisions upholding tribal court jurisdiction over nonmembers in various circumstances. Ultimately, the court held that the Navajo Nation tribal court lacked jurisdiction over an out-of-state insurer of a non-tribal company sued for causing a gasoline spill that went undetected for some time and caused significant environmental damage on the Navajo Reservation. Blackwell expressed interest in whether the Ninth Circuit, on appeal, would reverse the decision or adopt the lower court's views. He indicated concern for a continuing trend of non-Indian vendors refusing to accept the application of tribal law and jurisdiction of tribal courts.

Next, Blackwell summarized the recent United States Tax Court case, *Blue Lake Rancherias Economic Development Corp. v. Commissioner*. The Internal Revenue Service had sought to collect certain employment taxes from Blue Lake Rancheria's federal charter corporation allegedly owed by a separately established division of the federal charter corporation. Specifically, the IRS alleged that Blue Lake Rancheria could not lawfully establish a "legally distinct division" responsible for its own tax liabilities. The Tax Court, however, found that there was, in fact, a legally distinct division, properly authorized under the federal corporate charter and responsible for its own liabilities. Blackwell noted this is good news for tribes and their federal charter entities who desiring to segregate and limit legal and tax risks among various activities in which their federal charter corporations may engage.

Blackwell and Dahl shared comments on two tribal workers compensation insurance cases, one arising out of Oklahoma involving an Osage casino, and another arising out of New Mexico involving the Isleta Resort and Casino. The former matter, *Waltrip v. Osage Million Dollar Elm Casino*, involved an attempt by a casino employee to file a state workers' compensation claim. The Osage Nation's insurer, Tribal First, raised the Nation's sovereign immunity as a defense to the state action and, eventually, the matter made its way to the Oklahoma Supreme Court. There the court held Supreme that the Osage Nation enjoyed sovereign immunity and was not, therefore, subject to the jurisdiction of the Oklahoma Workers' Compensation Court; the workers' compensation insurer, however, did not enjoy the tribe's immunity and was estopped to deny coverage under a policy for which it accepted premiums computed in part on the employee's earnings.



*Mendoza v. Isleta Resort and Casino* similarly involved Tribal First as the insurer, and a workers' compensation claim filed by a casino employee in the State of New Mexico's workers' compensation system. Tribal First initially succeeded at having the claim dismissed invoking Isleta Pueblo's sovereign immunity but, on appeal, the decision was reversed based upon the reasoning of *Waltrip*. Blackwell and Dahl noted that, at the time of the claims in *Waltrip* and *Mendoza*, neither tribe had adopted a workers' compensation code or clearly laid out any due process protections for the workers who filed the claims. Further, the insurer failed to employ any safeguards of its own before ultimately denying the claims. The presenters emphasized that tribes need to make sure they have properly developed, adopted, and implemented the necessary legal infrastructure to preserve the due process rights of workers injured in their employment in order to reduce the risk of claims spilling into state courts and resulting in adverse decisions.

Finally, the panelists summarized *Carpenter v. Murphy*, a case pending before the United States Supreme Court which may have future implications for many tribes, depending upon the manner in which the Court decides the case. At issue is whether the United States ever disestablished the Muscogee (Creek) Nation reservation. The lower courts concluded that it had not and, as a result, the State of Oklahoma lacked authority to prosecute a tribal member for a murder within the Nation's still-existent reservation. As recently as 2016, in *Nebraska v. Parker*, a unanimous Court clarified that a reservation will not be deemed diminished without the expression of clear intent on the part of Congress to do so. Blackwell and Dahl indicated that, based upon the applicable diminishment test, the Muscogee (Creek) Nation reservation should remain intact. They also noted, however, that there had been significant interest from several states, along with the State of Oklahoma, and industries like petroleum, urging a finding of diminishment. Finally, they pointed out that it was unusual for the Supreme Court to accept the case, in light of the lower courts' application of the *Nebraska v. Parker* standard affirmed a short time ago.

b. Section 184

There were three main sessions dealing with the Section 184 program, with the most significant being the consultation session with HUD for the draft regulations recently circulated for Tribal comment. Several of the sessions focused in large part on the advantages of tribal participation (as compared with individual tribal member loans under the program). HUD's Office of Native American Programs' officials urged tribes to set up the necessary legal infrastructure (such as mortgage and foreclosure ordinances) for themselves or their housing authorities to take full advantage of the program. They noted a wide variety of tribal uses, including:

- On and off reservation housing with the tribe controlling the rent terms;
- Rehabilitation of aged housing stock;
- Economic development such as building houses in the tribal community for sale and resale for tribal and non-tribal members; and,
- Financial assistance for tribal members such as down payment assistance, payment of closing costs, development of land infrastructure.

The panelists highlighted that Section 184 program loans to tribes, their housing authorities or TDHE's can be used to purchase existing homes, to build new homes for resale or rental (both tribal members and non-Indians), to assume loans, to develop housing for skilled or professional staff, and to develop single family housing. They also pointed out that tiny homes (570 square feet or less) and multi-family dwellings (five-plex or greater) are not currently eligible for the program.

The program's down payment requirement is only 2.25% of the loan which, itself, is fully guaranteed by HUD. Initially, a tribe is limited to twenty loans, though the limitation is removed at the point a tribe can establish that it can successfully manage the initial twenty. Much of the flexibility in the Section 184 loan program derives from its loan qualification not being subject to low income requirements.

Currently, HUD is in the process of developing new regulations to govern the Section 184 loan program. The existing regulations, which are a mere five pages long, are out-of-date and no longer meet the needs of the current marketplace and environment. As reported in a previous memorandum, the draft regulations have been circulated for tribal comments, and are approximately 150 pages long. HUD circulated the draft for comment with a 60-day comment period, but several tribes have requested that HUD extend that period for an additional 60 days (which request was adopted as a resolution by NAIHC – see below). The goal is to have the final regulations published in early 2020.

HUD officials, including Heidi Frechette, Deputy Assistant Secretary for Office of Native American Programs, conducted a consultation as part of the Section 184 program track. Frechette explained that ONAP had attempted to roll out each new chapter of the proposed regulations as they completed them and take comments throughout the early drafting to enable stakeholders to be a part of the process as early as possible. She noted that the proposed regulations are intended to provide more structure as directed by the Inspector General in order to preserve the program's resources, while reducing the limitation on administration of the current program, due to the lack of sufficient existing regulatory guidance. The goal, she explained, is to provide greater safeguards for individual borrowers to keep their homes, and provide tribes larger involvement in helping individuals obtain homes. With regard to criticism of some provisions in the proposed regulations and, in particular, the inclusion of a definition for "low income," Frechette was adamant that there is no attempt or desire to render the Section 184 loan program a low income housing program. Instead, she explained, the low-income provision is intended to clarify the authority of HUD to allow lending under the program for lands designated by tribes through deed restrictions as low income.

The remainder of the consultation involved a quick run through of the various sections of the proposed regulations with brief highlights of each section. Participants requested that:

- the time period for commenting be extended;
- the "low-income" provision be clarified to more clearly articulate the intended purpose and further clarify that it is not intended to invoke or imply the use of low-income standards for the program; and,

- language be further developed to support the involvement of tribally-owned banks and community development financial institutions as eligible lenders and for foreclosure prevention efforts.

Frechette and her team expressed their receptiveness to the comments.

c. Methamphetamines: Testing and Remediation Roundtable

This presentation was a roundtable discussion with a number of different TDHEs and tribal housing programs regarding their meth testing and remediation programs. The first question posed was how or why your meth testing program was initiated. One participant stated that his program began because of the Tribe's concern about children in units with meth, which arose from a number of child custody proceedings in tribal court involving meth. His program got the support of Tribal Council immediately, which was very helpful in getting support for the testing program. But they also developed an inter-departmental approach, involving child welfare, social services, tribal courts, law enforcement and housing to develop a comprehensive strategy for addressing all the issues that arise: the need for substance abuse counseling; criminal prosecutions; foster care; homelessness due to evictions, etc.

The hardest part about initiating a meth policy was where to start. If you start testing homes without a baseline, and you turn up positive results, that does not demonstrate that the current tenant was using or cooking. So they moved forward by testing all the houses in their housing stock to establish a baseline, and they only took action against long-term tenants who tested positive, because they felt they could justify evicting those tenants based on the results. For the others, they just did clean up and re-testing to establish a zero baseline.

Another significant issue that the panelists faced was where to come up with the funds to remediate homes that test positive. If a significant number of homes test positive, you have to find the funds to do the remediation, and the costs vary based on how significant the contamination is. If they use their IHBG funds for these costs, they will spend their entire grant on remediation, so they have to find other sources. Someone asked if IHBG funds could be used for meth remediation, and the answer is yes, so long as you include it in your IHBG under maintenance activities. Another participant said that there are EPA "Brownfields" grants for remediation. DOJ and USDA also have grant programs that can be accessed for remediation.

Another issue the panelists discussed was what level of meth contamination should be considered "positive" and requiring action (either eviction and/or remediation). Different states have adopted different minimum contamination standards. Further complicating the issue is what needs to be done to remediate? Do you need to tear out walls and get to insulation and framing, or is it sufficient to clean surfaces? Different companies propose different approaches; need to be cautious about companies who come in with very low-cost clean up proposals – they may not be up to the task. Some tribes are looking at developing in-house expertise to do the decontamination and rehabilitation. There are trainings available to send your staff to, but you need to have a crew large enough to make this work out financially.

One of the other issues is what happens when the head of household is an elder, and one of his or her children or grandchildren are using in the house? Some programs have zero tolerance policies, requiring eviction for a positive test result, no matter the circumstances. This scenario has played out in several programs, creating political concerns with evicting the elder. But unless you can take action against the elder (who is the named tenant), there is no way to take effective action against the household. Having broad tribal council buy-in, and a wrap-around supportive services program, helps in these circumstances.

The main takeaway from the discussion was the importance of having an interdisciplinary, interdepartmental plan with support of your tribal council. The problems with meth contamination and remediation are many-faceted, and having a program that involves wrap-around services, is a necessity, both to be effective and in helping to mitigate political pushback.

d. USDA Rural Development: 2019 Policy and Priorities Outlook

Tedd Buelow from USDA spoke about the outlook for USDA Rural Development in 2019 and going forward. He began by discussing Rural Development Structure and Leadership. USDA is of eight “mission areas” within USDA, and their focus is facilitate prosperity and economic development in the rural United States, which includes much of Indian Country. They have business, utilities and housing functions. Under their Rural Housing Service, they have three major program areas: single family, multi-family and community facilities. Their leadership is under the Assistant to the Secretary for Rural Development (Joel Baxley is the Acting Assistant Secretary), with main headquarters in D.C., but directors at the State level. Most of their staff in out in the field, rather than in headquarters. USDA has set up a Rural Development Innovation Center, which is aimed at looking at best practices and other approaches for enhancing the USDA RD mission. Mr. Buehlow works out of that program, which he described as “hard wired” into the rest of USDA. The Rural Development Program was reauthorized in 2018, in the Farm Bill. The bill gave USDA the authority to set up training and technical assistance for tribes. No funds were set aside for that program. USDA RD is going to hold a listening session about how to make this program work for tribes.

USDA does not have any tribal-specific programs, although they have some programs that have set-asides for tribes or tribal members. But tribes and tribal members are eligible for most of these programs, which involve direct loans, loan guarantees, and grants. Their largest program overall is the single-family home guaranteed loan program (USDA Section 502), but it is significantly underutilized in Indian Country (this program is similar to the HUD Section 184 loan guarantee).

**V. *NAIHC Business Meeting***

Executive Director Tony Walters gave three reports. The first was the Executive Director’s Report. NAIHC’s training and TA program is ongoing, and despite the government shutdown, which slowed down access to funds, did not disrupt NAIHC’s ability to carry out training and TA with IHBG funds. The other training is the NAIHC Leadership Institute, to

train Indian housing professionals. There were 148 professions trained in Leadership Institute courses. NAIHC is moving ahead with a number of new training initiatives, including online training, HUD asset building conference, post-purchase curriculum, and a credit building pilot project.

Next was the Treasurer's Report (because the Treasurer was unable to attend the convention, Mr. Walters gave the presentation). The statement of financial position was included in the materials. The audit results were good: no qualifications, no findings of non-compliance, no corrective measures suggested. The financial position and financial infrastructure is sounds. NAIHC operates its training and TA program on a cost-reimbursement basis, which is relatively new and sometimes skews the numbers in the statement of financial position. The report does show revenue is higher than expenses, but in part this reflects grants received for projects that NAIHC is still working on.

The third and final report that Mr. Walters provided was the Legislative Report, which was the same as he provided at the Legislative Committee meeting, described above.

Next, NAIHC considered a series of resolutions:

Resolution 2019-A: This resolution called on HUD to move quickly on issuing the NOFAs for the competitive grant funds. Since the NOFA has been released, the resolution was withdrawn.

Resolution 2019-B: This resolution expressed support for Senator Warren's American Housing and Economic Mobility Act (discussed in the above section regarding the Legislative Committee) and called on Congress to adopt the Indian housing specific provisions of that bill. The resolution passed unanimously.

Resolution 2019-C: This resolution urges Congress to authorize the Secretary of the Department of Veterans Affairs to take steps that would make the VA Native American Direct Loan program more effective, by providing for more tribal and Native CDFI involvement in the program. The resolution passed unanimously.

Resolution 2019-D: This resolution calls on Congress to include a tribal set-aside in any legislation and appropriations to update and repair existing, aging infrastructure. The resolution passed unanimously.

Resolution 2019-E: This resolution calls on HUD to provide more time for commenting on the draft Section 184 regulations, from 60 to 120 days. The resolution also calls on HUD to remove the income limitations in the draft regulations, and to remove the maximum loan limit and base any limits on ability to pay. The resolution passed unanimously.

Resolution 2019-F: This resolution was put forward by the Board, to call on Congress to continue funding the IHBG at the higher levels in the past two years (including the competitive funds), but also calling on the funds to be released to and by HUD more expeditiously. The

Board had a great deal of discussion about this resolution, and wanted to present it in a show of unity, particularly regarding the \$100 million in competitive funds. The resolution passed unanimously.

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.