



2120 L Street, NW, Suite 700
Washington, DC 20037

T 202.822.8282
F 202.296.8834

HOBBSSTRAUS.COM

MEMORANDUM

December 9, 2019

TO: Housing Clients

FROM: HOBBS, STRAUS, DEAN, & WALKER, LLP

Re: *NAHASDA Reauthorization Bill Introduced in House*

On December 5, 2019, Representative Denny Heck (D-WA), along with co-sponsors Scott Tipton (R-CO), Tom Cole (R-OK), Debra Halland (D-NM), Gwen Moore (D-WI), Don Young (R-AK), and Tulsi Gabbard (D-HI), introduced H.R. 5319, a bill to reauthorize the Native American Housing Assistance and Self Determination Act (NAHASDA). A copy of the bill is attached, and a brief summary of its key provisions follows:

Sec. 2 would make the head of ONAP an Assistant Secretary.

Sec. 101 requires that the Secretary act within 60 days on a waiver request for submitting an IHP after the deadline.

Section 103 requires that the Secretary act within 60 days on waiver request regarding environmental review and documentation requirements.

Section 103 also allows for the consolidation of environmental review requirements if more than one source of federal funding is used on a tribal housing project. This provision allows for the NAHASDA environmental review cover the other federal funding environmental review requirements, so long as the other federal funding does not exceed 49% of the total costs of the project.

Section 104 requires that the Secretary act within 60 days on a waiver request for exceeding the total development costs maximum on a project.

Section 104 also provides a definition for total development costs.

Section 202 allows for tribes and TDHEs to execute a new homebuyer contract with an existing tenant for the same home, even if the tenant is no longer income-eligible.

Section 202 also removes the binding commitment requirement when IHBG funds are used for improvements of privately-owned homes, if the cost of such improvements does not exceed 10 percent of the maximum total development cost for such home.

Section 203 adds language the “lease requirements” section of NAHASDA that requires tribes and TDHEs utilize leases that require a termination notice period consistent with applicable laws where the home is funded with IHBG and in part with other sources of federal funds.

Section 204 authorizes the use of IHS sanitation facilities funding by tribes and TDHEs using IHBG funds in the same project, which would reverse a longstanding prohibition against use of such funds in IHBG-funded projects.

Section 205 creates an exemption to the total development costs cap for energy efficient housing, to the extent such exemption is necessary to provide energy efficiency upgrades to the project and “the cost of such upgrades does not exceed the average cost of such upgrades in the area in which the project is located.”

Section 301 specifically authorizes funding for the next five fiscal years, increasing approximately \$30-\$40 million each year, starting with \$680 million in FY 2020 and increasing each year to \$820 million in FY 2024.

Section 302 sets out a process by which a tribe or TDHE with a substantial amount of unexpended IHBG funds in LOCCS would be denied subsequent years’ IHBG funding until the unexpended funds are spent down. This provision applies only to tribes/TDHEs whose annual IHBG allocation is \$5 million or higher.

Section 401 requires ONAP to issue its final monitoring report within 60 days after receiving comments from the tribe or TDHE that is being monitored.

Section 402 requires the annual report to Congress to be provided to the House Financial Services Committee, the House National Resources Committee, and the Senate Committee on Banking, Housing and Urban Affairs, and to any subcommittees having jurisdiction with respect to American Indian or Alaska Native affairs.

Section 501 includes language permanently authorizing the Tribal HUD-VASH program, requiring a set-aside of 5% of the HUD-VASH funds overall for use by the Tribal program. The language also provides the HUD and VA secretaries with flexibility to waive certain requirements otherwise applicable to the use of such funds.

Section 502 reauthorizes the Section 184 loan guarantee program, and similarly authorizes appropriations for the next five fiscal years in increasing amounts, beginning with \$12.2 million in FY 2020 and increasing each year to \$14.7 million in FY 2024. This provision also expressly vests Tribal Courts with jurisdiction over HUD in foreclosure proceedings involving Title VI loans, removing an obstacle raised in recent years by HUD and the U.S. DOJ. The provision also authorizes the U.S. DOJ to hire contract attorneys to carry out its representation in such proceedings.

Section 503 establishes a 5% tribal set-aside for USDA-Rural Utilities Services funding.

Section 504 establishes tribal eligibility for certain HUD housing funding under the 1968 HUD Act.

Section 505 reauthorizes the IHBG competitive grants also for another five years, with increasing amounts each year (codifying the requirements for determining allocation of such funds), beginning with \$100 million in FY 2020 and increasing each year by \$5 million to \$120 million in FY 2024.

Section 602 would increase the maximum time that trust land can be leased for NAHASDA-funded projects from 50 to 99 years.

Section 603 would provide an exemption for Indian tribes from the FEMA National Flood Insurance Program participation requirements.

Title VII would reauthorize the Native Hawaiian NAHASDA program, would authorize specific Native Hawaiian block grant appropriations for the next five fiscal years, beginning with \$13 million in FY 2020 and increasing each year to \$15.6 million in FY 2024, and would authorize increasing appropriations for the Native Hawaiian loan guarantee program for the next five years as well (\$386,000 in FY 2020 to \$446,000 in FY 2024).

This is a very strong bill, and includes most of the substantive provisions that Indian Country has been pushing for in a NAHASDA reauthorization bill since 2013. There are a few provisions missing from this bill that had been in previous NAHASDA reauthorization bills, most prominently any provision allowing for flexibility of the 30% maximum rent rule.

We understand there may be opposition to the bill from Congresswoman Maxine Waters (D-CA), because it does not include any language regarding the Cherokee Freedmen. Her opposition is significant because she is the Chair of the House Financial Services Committee, which has jurisdiction over the bill. Moreover, the bill still contains the Native Hawaiian language, which will likely result in the same opposition by certain Senators who opposed unanimous consent and blocked passage in prior sessions.

If you have any questions, please do not hesitate to contact me at egoodman@hobbsstrauss.com or by phone at (503) 242-1745.