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To: Tribal Housing Clients
Fr: Hobbs, Straus, Dean & Walker, LLP
Re: **2020 NAIHC Legislative Conference**

The National American Indian Housing Council (NAIHC) held its annual Legislative Conference in Washington, DC on February 24-26, 2020. Updates from Capitol Hill and Federal Partners were provided on February 25 as morning and afternoon sessions, respectively. NAIHC Executive Director Anthony Walters presided over the two sessions.

LEGISLATIVE SESSION: MORNING

Mike Andrews, Senate Committee on Indian Affairs (SCIA) Majority Staff Director. Mr. Andrews spoke about efforts to reauthorize the Native American Housing Assistance and Self Determination Act (NAHASDA) and urged action on the Tribal HUD-VASH Act of 2019.

NAHASDA Reauthorization. Mr. Andrews said that a draft Senate bill to reauthorize NAHASDA is being reviewed by the Department of Housing and Urban Development (HUD). He anticipates that the bill will be released this month, that there will be a SCIA hearing on it this summer and then they will see "what the appetite is" to pass it and send it to the House of Representatives this fall. Mr. Andrews reported that the draft Senate NAHASDA reauthorization bill contains provisions to:

- Remove the restriction on the use of Indian Health Service (IHS) water and sanitation funds being used with HUD-funded projects;
- Define a Tribally Designated Housing Entity (TDHE), Tribe, or Community Development Financial Institution (CDFI) as a "development entity" for the purposes of the Indian Community Development Block Grant (ICDBG) Program for new construction;
- Include Native CDFIs in HUD's Section 184 Loan Guarantee program;
- Indemnify HUD from bad actors in the Section 184 Loan Guarantee program;
- Make tribes and TDHEs eligible for HUD's Continuum of Care (CoC) and Family Self Sufficiency (FSS) Programs;
- Elevate the HUD Deputy Assistant Secretary for Native American Programs to Assistant Secretary;
- Provide flexibility on the 30% maximum rent rule;
- Allow the use of Indian Housing Block Grant Program (IHBG) formula funds for meth remediation; and

- Allow for 99-year leases on trust and restricted lands.

Tribal HUD-VASH Act (S. 257/ H.R. 2999). Mr. Andrews reported that S. 257 passed the Senate on June 27 of last year and is still awaiting consideration by the House Committee on Financial Services—as is the identical companion legislation: H.R. 2999. Both bills have bipartisan co-sponsors yet the Committee has not taken any action. (We note that the legislation is also included as Sec. 501 of the House NAHASDA reauthorization bill H.R. 5319.) Mr. Andrews explained that the legislation would change the Tribal HUD VASH program from a pilot program to part of the underlying HUD VASH statute. He said that the Administration supports the legislation and there is bipartisan support for it in Congress, yet the House Financial Services Committee is not acting on it.

Senator Lisa Murkowski (R-AK). Senator Murkowski is the Chair of the Senate Energy and Natural Resources Committee and Chair of the Senate Appropriations Subcommittee on Interior, Environment and Related Agencies. She also serves on the SCIA. She said that as the Chair of the Senate Energy and Natural Resources Committee, she is focused on ensuring that there are affordable, reliable, diverse, and secure energy sources for the American people. She said that while many Americans are concerned about heating costs for their home, many are concerned about having a home to heat in the first place. Senator Murkowski said that, "housing impacts everything else and everything comes back to the basic need for housing." She explained that the lack of housing impacts whether teachers, law enforcement officers and health professionals can live in the communities they serve. She said that the lack of housing is moving to the top of the list of priorities for Native communities. She described a SCIA field hearing in Alaska where witnesses described overcrowded and substandard housing with, for example, 12-15 people sleeping in shifts in a two-bedroom home.

Legislation Supported. Senator Murkowski emphasized the importance of reauthorizing NAHASDA and acknowledged the need to fully fund it. She said that there also must be new and innovative ways to meet the need for housing. Sen. Murkowski highlighted her sponsorship or co-sponsorship of the following legislation:

- *Fighting Homelessness Through Services and Housing Act (S. 923 - Feinstein / H.R. 1978- Lieu)* would authorize a grant program within the Health Resources and Services Administration for housing programs that offer comprehensive services and intensive case management for homeless individuals and families with a 5 percent set-aside for tribes and TDHEs;
- *Tribal Access to Homeless Assistance Act (S. 2282 - Smith / H.R. 4029 - Heck)* would enable tribes and TDHEs to access grants under the HUD CoC program;
- *Tribal Energy Reauthorization Act (S. 2610 - Murkowski)* would extend the authorization of for the Tribal Energy Loan Guarantee Program at the Department of Energy and would expand the definition of "tribal land." It would also amend the definition of "tribal energy development organization" to include TDHEs (SCIA hearing to be held this week);
- *Inspiring Nationally Vibrant Economies Sustaining Tribes Act (S. 3181 - Murkowski)* would expand the definition of "low-income community" for purposes of the New Markets Tax Credit to include certain tribal lands. It also would prioritize the

allocation of credit amounts for investment in Native communities and requires an allocation of at least 10 percent of credit amounts to certain Indian community development entities for investments that primarily serve low-income communities; and

- *Affordable Housing Credit Improvement Act (S. 1703 – Cantwell / H.R. 3077 - DelBene)* would direct states, for the purposes of allocating Low Income Housing Tax Credits, to take into account "the affordable housing needs of individuals in the State who are enrolled members of a tribe with respect to an Indian tribal government" and it would include "Indian areas" in the definition of "difficult development areas."

Senator Tina Smith (D-MN). Senator Smith serves on the SCIA and the Senate Committee on Banking, Housing, and Urban Affairs--the two Committees with jurisdiction over the NAHASDA reauthorization legislation in the Senate. She said, "If you don't have a safe, affordable place to call home, then nothing else works: not education, health, family, or work" and that, "Housing is at the core of everything we should be doing." She said that as a Senator, one of her jobs it is to lift up the voices of Native people regardless of whether they are on reservations or in urban areas.

Senator Smith described listening sessions in her state of Minnesota saying that her conclusion from these listening sessions is that, "Every element of housing is broken. Whether we are talking about homelessness, to homeownership, it is a particularly difficult challenge on tribal land. We are dealing with stagnant levels of funding, current and historical trauma, and barriers to homeownership on trust land." She said that, "The solutions for Indian Country need to come from Indian Country." Senator Smith highlighted her work with Senator Mike Rounds (R-SD) on the *Native American Housing Affordability Act (S. 2725)* which would allow the Secretary of HUD to issue a certificate of guarantee for a loan involving security interest in Indian trust land before the Secretary receives the required trailing documents if the originating lender agrees to indemnify the Secretary. Senator Smith also urged support for her bill, the *Tribal Access to Homeless Assistance Act (S. 2282)* (described above). She concluded that, "The underfunding for housing is violation of federal trust responsibility. We must work to fulfill the promise of democracy."

Sean Gard, the Chief of Staff for Representative Gwen Moore (D-WI-4th). Mr. Gard said that eight years have passed on efforts to reauthorize NAHASDA. He said that Representative Moore, from her position on the House Financial Services Committee, had been influential on getting NAHASDA reauthorization bills passed by the House of Representatives, *twice*. Mr. Gard said that even though Representative Moore now serves on the House Ways and Means Committee and no longer serves on Financial Services, she will continue to support efforts to move the reauthorization forward. Mr. Gard said that Representative Denny Heck (D-WA-10th), the sponsor of the NAHASDA reauthorization bill in this Congress (H.R. 5319), is retiring "but has the Chairwoman's [of the Committee] ear [on this matter]." Mr. Gard concluded that the Committee staff of House Financial Services Chairwoman Maxine Waters (D-CA-43rd) are "actively looking for how to move the [reauthorization] bill in Committee" but that "sticky issues" remain.

FEDERAL PARTNERS SESSION: AFTERNOON

The afternoon session with federal partners included remarks from NCAI CEO Kevin Allis, Nicki Pitre, Executive Director of CNAY, Dee Alexander, Tribal Affairs Coordinator, Office of Congressional and Intergovernmental Affairs, Jackson Brossy, Native CDFI Network, David Lipsetz, CEO of Housing Assistance Council (HAC), David Valdo, CEO of AMERIND, Assistant Deputy Secretary Heidi Frechette, Assistant Secretary for Public and Indian Housing Hunter Kurtz, and Tony Walters, NAIHC.

Kevin Allis, the CEO of NCAI. Mr. Allis began by discussing his goal in assuming the CEO role as “going back to the basics.” He stated that tribes in Indian Country need to conduct their advocacy more closely aligned with each other, and that NCAI needs to recommit to being Indian Country’s Congress. He announced that in the coming months, all of the heads of the top twelve organizations that advocate for Indian Country will convene in San Francisco for three days and have intensive closed door discussions on how to establish a more unified and strategic agenda for Indian Country. He described the current way tribes advocate in Congress as the “tap on the shoulder” technique, whereby tribal leaders and organizations advocate their positions individually to congressional members, rather than organizing and presenting a unified front working to advocate the agenda of Indian Country as a whole.

He stated that NCAI continues to review the H.R. 5319, *Native American Housing Assistance and Self-Determination Reauthorization Act of 2019*, and emphasized that NCAI does not support the bill at this point. He said that NCAI is still considering whether the legislation is sufficient for the needs of Indian Country. Furthermore, he emphasized that NCAI is reviewing whether the bill would provide an opportunity for negative amendments to be attached. The bill would provide \$680 million in formula funding, which NCAI considers to be insufficient. The amount provided in 1996 when NAHSDA was originally written, adjusted for inflation, would be \$1 billion. The bill also provides \$100 million in competitive grants, which NCAI does not believe is a preferable way to deliver funding nor should it be required of tribes because, he said, this competitive grant system is not established in any treaties or supported by the trust responsibility. He also mentioned that NCAI was reviewing H.R.2999, the *Tribal HUD-VASH Act of 2019*.

Mr. Allis addressed the rumors being heard about the Department of Interior revoking or narrowing the Department of Interior Solicitor’s M-37029 opinion dated March 14, 2014 (known as the *Carciere* M-opinion). That opinion, drafted when Hilary Tompkins was the Interior Solicitor, set out a relatively robust definition of the *Carciere* decision’s “under federal jurisdiction” language, giving the Department discretion to analyze and authorize fee-to-trust transactions that might be impacted by the *Carciere* decision. He let the attendees know they are meeting with the AS-IA and staff to stay abreast of what is happening with the *Carciere* M-opinion.

Mr. Allis also criticized the administration over its budget proposal. Even though a core group of legislators oppose the President’s budget proposal, and will not allow it to move through Congress at these low levels, starting the budget negotiations from the Administration’s lowball number puts tribes at a disadvantage moving forward. Further, the budget proposal is still bad for Indian Country because it zeroes out seven different line items

for the Bureau of Indian Affairs. He emphasized the need for Congress to hear their stories so that Congress would not approve these budget cuts.

Mr. Allis noted some accomplishments of the organization and highlights of their policy area focuses. First, he highlighted NCAI's recent development of home ownership webinars with the Federal Reserve Bank of Minneapolis. He noted that NCAI passed 80 resolutions at in Albuquerque, NM, 80 resolutions in Reno, NV, and is currently monitoring 260 different policy priorities. Second, he noted their focus on the 477 program as a policy priority. The recent Interagency Memorandum of Agreement between the 12 federal agencies involved in the 477 program does not reflect tribal interests as established by legislation, so NCAI will continue advocating changes in how it is implemented.

Nicki Pitre, the Executive Director of Center for Native American Youth (CNAY). CNAY was founded by Senator Byron Dorgan with a one-million dollar donation from his residual campaign funds. CNAY is one of 28 programs at the Aspen Institute, and the only one with a Native American focus. Recently, CNAY has worked with Teen Vogue to publish articles written by Native youth, testified before Congress, implement a cultural preservation ambassador program, and produced podcasts about culturally relevant topics, including Missing and Murdered Indigenous Women (MMIW) and Seminole traditional self-defense practices.

Dee Alexander, the Tribal Affairs Coordinator, for the Office of Congressional and Intergovernmental Affairs, U.S. Census Bureau. Ms. Alexander spoke to the attendees about the upcoming 2020 Census. Census Day is on April 1, 2020, and her office in the Census Bureau is conducting outreach throughout Indian Country to promote timely responses. In Alaska, they are offering events with pizza and snacks to get people to come out to get counted. Census Bureau is providing methods to respond by mail, online and by phone to the questionnaires this year. Ms. Alexander has conducted 18 consultations with tribes in the development of the 2020 census, and continues to do tribal consultations and can do one-on-one consultations tribes.

The Census questionnaire will be mailed to respondents, and if not responded to by May 13, then someone from Census will come out in person to obtain the questionnaire response. For the 2020 census, the respondents can self-identify as Native American individuals, and will not have to answer any questions about tribal enrollment. She discussed that previously tribes wanted the Census Bureau to include a tribal enrollment question, however, through consultations for the 2020 Census, the consensus among tribes was to not include such a tribal enrollment question. Individuals will be able to self-identify as Native American, and can specifically identify up to six tribal affiliations. She notified the attendees that NCAI is offering grants to tribes to help with ensuring full counts of the Census. Similarly, she described the states' complete count committees, which have funding that tribes may be able to access. She mentioned that one tribe received \$35,000 through a state complete count committee, and that California has \$19 million in funds available through its complete count committee.

Jackson Brossy, the Executive Director of the Native CDFI Network (NCN). Mr. Brossy discussed the efforts to establish more Community Development Financial Institution (CDFI) funds for Indian Country. The NCN's goal is to expand the CDFI's in Indian

Country, also called Native CDFI's, or "NCDFI's." These organizations help provide capital and financial resources to businesses, home buyers, and economic development in Indian Country. They had a policy summit in November of 2019, where the head of LISC (Local Initiatives Support Corporation) Maurice Jones spoke, and leadership of NAIHC, NIGA, and NCAI presented as well. The NCN has also met with Senator Lisa Murkowski about its policy agenda.

NCN and its members and partners work in tribal businesses ranging from tribal payday lending to housing. He stated the NCN recently has focused on the allocation of new market tax credits, and would be seeking \$300 million for the Native American CDFI Assistance (NACA) program. NCN promotes creating a tribal-specific set-aside of 10%, or \$30 million. This 10% set-aside would be carried out through passage of the S.3181, the *Inspiring Nationally Vibrant Economies Sustaining Tribes Act of 2020*, which the NCN supports. They also support the expansion and permanent authorization of the USDA Rural Development (USDA-RD) Section 502 Direct Loan Program, which currently funds two Native CDFI's in South Dakota. The 502 Program provides low income housing assistance on tribal lands.

Finally, the last policy initiative NCN is focused on is the expansion of the *Community Reinvestment Act (CRA)* requirement for banks to invest in communities where they do business to be expanded beyond the metropolitan statistical areas to include rural and tribal areas. The CRA is carried out by the Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) which develop implementation regulations. They have developed new regulations through a notice of proposed rulemaking with a comment period due on April 8, 2020.

David Lipsetz, CEO of Housing Assistance Council (HAC). HAC's mission is to provide affordable housing in rural communities. Established in 1971, HAC works to educate congressional members and policy makers on rural issues, provide housing assistance to communities in Appalachia, the Louisiana delta, and throughout Indian Country. The home loans they provide are very affordable, and include low rates for home on or off trust lands. The HAC provides research pieces, quarterly publications, and runs projects about "Native American Creative Placemaking," which is a way for tribes to reconnect with their traditional ways of life.

Mr. Lipsetz provided examples of their work with tribal communities at Navajo Nation, Northern Cheyenne, and White Mountain Apache. The organization works with housing authorities, tribal communities, and the tribal governments. HAC recently had a symposium in Rapid City, South Dakota on tribal issues, has three Native Americans on its board of directors, provided testimony to Congress on increasing NAHASDA funding in October 2019, and will be devoting an entire day to tribal housing issues at their upcoming annual Rural Housing Conference in Washington, D.C. in December, 2020.

Derick Valdo, CEO of AMERIND. Mr. Valdo presented on the status of the insurance company and their top priority issues for Indian Country. He briefly explained the history of AMERIND, which was created after a financial crisis when HUD shifted its insurance policy responsibilities for Indian Country to AMERIND instead. The company currently provides insurance to 93% of tribal low-income housing, 10% of tribal

governments' insurance, and 5% of tribal business enterprises' insurance policies. After receiving support from their Board of Directors, they are planning to expand their insurance policy offerings beyond the low-income housing insurance that they have traditionally focused on.

He outlined his concerns about the erosion of tribal sovereignty after *Lewis v. Clarke*, and the continuing attacks on tribal sovereignty through litigation challenging the *Indian Child Welfare Act (ICWA)*. He warned of the increased potential for tribal employees to face individual legal liability now. Tribes must be vigilant in updating their policies, regulations and laws to provide the maximum amount of liability protection to tribal entity employees. NIGA is developing model tort liability laws and policies for protecting tribal employees from liability. Mr. Valdo discussed their \$3 million investment in Oweesta, which is a Native CDFI intermediary organization that provides financial products and development services exclusively to Native CDFIs and Native communities. After raising another \$8 million, they leveraged a total of \$11 million, which resulted in the construction of over 200 homes in Indian Country. Mr. Valdo highlighted the importance of this because HDU-financed housing often goes to construction off the reservation. Before closing, he announced the importance of tribes to obtain the spectrum on tribal lands through the FCC. Unfortunately, only five tribes have applied as of February 25.

Heidi Frechette, Deputy Assistant Secretary for HUD Office of Native American Programs (ONAP). DAS Frechette spoke about the work at ONAP and its suite of Native American programs. The new competitive Indian Housing Block Grant (for FY 2018 and 2019) will be providing \$200 million to 50 tribal communities. Ms. Frechette gave an update on all the programs that HUD ONAP administers, and stated that they are currently working on the next Notice of Funding Availability (NOFA) for Fiscal Year 2021. The ONAP is revising the NOFA based on feedback from tribes on the previous NOFA, which are mostly technical in nature. The NOFA will be providing \$655 million in IHBG funding, which Congress has released earlier than usual this year to 593 tribal grantees. The ICDBG application process closed earlier this year, and HUD ONAP anticipates releasing the decisions in the later part of summer. She explained that the ICDBG is actually a part of the general Community Development Block Program (CDBG).

Tribes have pushed for the expansion of the Tribal HUD-VA Supportive Housing program (Tribal HUD-VASH) program, which ONAP has taken into consideration. ONAP plans to publish a rule on this issue within the next two months. Regarding the Section 184 program, ONAP is having a two-day training session for lenders that process, service and review claims submitted for the housing loans under the program, in order for private industry to become more familiar with tribal issues and housing practices. They will conduct similar two-day sessions for the Title VI program on loan leveraging. Ms. Frechette asked for tribal feedback and comments on the office's technical assistance provision. She also spoke about attending the recent Crime Prevention Conference in Denver, Colorado, where ONAP partnered with NAIHC on training, webinars, case studies, best practices and tribal speaker opportunities. Her office intends on having more in the future. Lastly, she introduced the HUD ONAP's "Codetalk" online system, where these resources can be accessed, along with other housing-related tools for tribes and tribal housing organizations.

Hunter Kurtz, Assistant Secretary for Public and Indian Housing. Assistant Secretary Kurtz presented on the HUD ONAP's parent agency, the Office of Public and Indian Housing. He explained that NAHASDA's purpose was to directly fund tribes and tribal organizations, and again highlighted the \$200 million IHBG competitive funding announced in December 2019. As an example of this success, he stated that the Fort Peck Housing Authority was awarded \$5 million, which will help produce 43 new affordable homes and six single-family homes. Mr. Kurtz has recently visited places in Indian Country, including Fort Peck and Mississippi Choctaw, and he attended the Crime Prevention Conference in Denver, Colorado. He has tried to see what tribes need, and what stories are out there in Indian Country related to their housing work at HUD. He announced that \$12.6 million would be going to the tribal HUD-VASH program. Finally, he noted that he also supported the idea of elevating the Assistant Deputy Secretary role to Assistant Secretary within HUD, because he has to wear two hats, both public housing and Indian housing. Separating these roles would be productive for the agency.

Tony Walters, Executive Director of NAIHC. Mr. Walters gave the closing remarks. He highlighted the training and technical assistance programs for tribes and tribal housing authorities. In 2020, the NAIHC plans to conduct 40 regional trainings, 6 leadership institute courses, and develop e-Learning certificate programs through their website. He also announced a \$30,000 grant program for senior-owned homes, which may be applied for by March 13, 2020. Two grants will be awarded per region, and are supported financially by Wells Fargo.

If you have any questions regarding this memorandum, please contact Ed Clay Goodman at egoodman@hobbsstrauss.com or by phone at (503) 242-1745.