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MEMORANDUM

August 7, 2020

To: TRIBAL HOUSING CLIENTS

From: Ed Clay Goodman
~~HOBBS, STRAUS, DEAN & WALKER, LLP~~

Re: *Housing Issues Update*

On August 6, 2020, the National American Indian Housing Council (NAIHC) convened a Legislative Committee Conference via Zoom. The Conference was presided over by NAIHC Executive Director Tony Walters. The next Legislative Committee Conference is scheduled for September 3. The updates below are a synthesis of information provided during the Conference and other updates we have received.

I. Congressional Updates

a. Coronavirus Relief.

While both Chambers of Congress were set to leave for August Recess, the House and Senate are now in a holding pattern of sorts, not exactly in session but on call to return to Washington, DC within 24 hours of votes being scheduled should a deal be reached on a fourth phase of a coronavirus relief package. At this time, Congressional Democrats and the Trump Administration have reached an impasse and it is not clear how this can be resolved. Senate Republicans, because of differences within their own caucus over their Phase 4 priorities, have effectively sidelined themselves from negotiations at this time. We note that while the House Democrats' Phase 4 proposal, the \$3 trillion HEROES Act (HR 6800) would have included tribal housing set asides, the Senate Republicans Phase 4 proposal, the \$1 trillion HEALS Act did not include those set asides, and was much more narrowly tailored (see our memo of July 30, 2020).

b. FY 2021 Appropriations, November Elections, and the "Lame Duck".

Both Chambers are then set to return September 8 for an intense period of work where they will try to iron out differences in FY 2021 appropriations priorities before the end of FY 2020 on September 30, 2020. While the House has passed nearly all of their FY 2021 appropriations bills, including Transportation-Housing and Urban Development (T-HUD), it is widely acknowledged that Congress is unlikely to reach an agreement on FY 2021 appropriations before the start of FY 2021 on October 1, 2020 (the Senate has yet to even release their draft bills over partisan disagreements). Rather, the most likely outcome is that Congress

will pass a Continuing Resolution (CR) to continue FY 2020 terms and conditions and spending levels just beyond the November 3, 2020, elections.

Congress will not be in session for most of October and is set to return on November 9, after the elections. This period of time after the elections but before January when new Members of Congress (and/or a new Administration) are sworn, in is often referred to as the "lame duck" session. There will be another intense period of work but depending on the outcome of the elections, Democrats in Congress could try to pass another CR to fund the federal government until the new Congress is sworn in, thus giving the incoming Congress the opportunity to shape FY 2021 appropriations more to their liking.

c. NAHASDA Reauthorization and Tribal HUD-VASH Bill.

As of this writing, the House Native American Housing Assistance and Self Determination Act (NAHASDA) reauthorization bill remains tied up in the House Financial Services Committee over Chairwoman Water's (D-CA) concerns relating the Cherokee Freedmen issue. In the Senate, Senator Lee (R-UT) remains an obstacle to the Senate NAHASDA reauthorization bill over the Native Hawaiian provisions. Recently, Senate Committee on Indian Affairs Chairman Hoeven (R-ND) and Vice Chairman Udall (D-NM) were able to offer an amendment containing their NAHASDA reauthorization bill to the Senate's FY 2021 National Defense Authorization Act (NDAA). The NDAA is a useful bill to add other provisions to because Congress considers it a "must pass" bill. Unfortunately, we understand that because Senate Majority Leader McConnell (R-KY) prioritized having an NDAA bill that could easily pass the Senate, the NAHASDA amendment was ultimately dropped. As of this writing, both the House and Senate have each passed their own versions of an FY 2021 NDAA and will go to conference to iron out differences and create a "conferenced" version to vote on based on these negotiations. It is not expected that an amendment containing NAHASDA will be added in conference as it is in neither the House-passed nor the Senate-passed version of the FY 2021 NDAA.

We understand that during the lame duck session there will be another push get a NAHASDA reauthorization bill passed. Also, there will be a push to get the House to pass the standalone Tribal HUD-VASH bill, which has already passed the Senate.

d. One-Stop Shop for Title Status Reports (TSR) Draft Bill.

It was reported during the Conference that Senator Thune (R-SD) remains interested in introducing a one-stop shop for title status reports (TSR) bill. It was reported that he has been writing to the Department of Interior on this topic.

II. Other Matters

a. 2020 Census.

The decennial census count is required by the Constitution. The count is used to apportion congressional districts and to determine the allocation of a substantial amount of

federal funding. Indian Country has historically been undercounted. Alarming, this Administration is choosing to end the 2020 Census count on September 30, 2020, a full month before it was scheduled to conclude. This could exacerbate the under representation of hard to count or reluctant to respond communities. Tribes and TDHEs can play an important role in encouraging tribal members to participate in the 2020 Census.

b. NAIHC Legal Symposium.

The NAIHC Legal Symposium will be held, in some fashion, in Las Vegas, NV in December of 2020. Depending on the status of the COVID-19 pandemic, many of these sessions could be held virtually to allow greater (and safer) participation. Executive Director Walters emphasized that regardless of whether the symposium is held in person, virtually, or by some combination thereof, it will be held. NAIHC has sent out a link to a survey to its membership and other affiliated parties, seeking input on the Symposium. Please check your emails and provide a response.

Conclusion

Please do not hesitate to contact Ed Clay Goodman at 503-799-3924 or at egoodman@hobbsstrauss.com if you have any questions about our report or any of the provisions in the attached summaries.