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## MEMORANDUM

July 6, 2020

To: Tribal Housing Clients

Fr:  HOBBS, STRAUS, DEAN & WALKER, LLP

Re: **NAIHC Legislative Committee Meeting**

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The NAIHC Legislative Committee held its most recent meeting by teleconference on July 2, 2020. The main purpose of the call was to provide the latest updates on the NAHASDA Reauthorization (S. 4090) with staff from the Senate Committee on Indian Affairs, COVID legislation, and ICDBG-CARES Act approval. NAIHC Executive Director Tony Walters presided over the meeting.

### 1. 116<sup>th</sup> Congress Updates

#### *a. Senate NAHASDA Bill S. 4090*

On June 25, 2020, a bipartisan group of Senators introduced a bill (S. 4090) to reauthorize the Native American Housing Assistance and Self-Determination Act of 1996 (“NAHASDA”). Two staff members from the Senate Committee on Indian Affairs (“Committee”) provided some details of the provisions of the bill. The staff noted that it is a fairly extensive bill that addresses everything from the reauthorization of NAHASDA to Indian Housing Block grants. The bill does include a number of provisions that have been vetted by past Congresses. This is a ten year reauthorization of NAHASDA instead of the standard five year authorization. The bill includes provisions that would:

- Consolidate the number of environmental reviews that a tribal housing project must undergo in order to begin construction;
- Provide funding for education-related housing expenses
- Empower Indian Tribes to develop their own rental housing laws, including waivers of certain HUD rental housing requirements and lease termination procedures if a valid tribal ordinance is in place;
- Strengthen the role of the HUD Office of Native American Programs by creating an Assistant Secretary of Indian Housing at the Department, which will provide Indian country with an additional voice in the HUD Secretary’s Office;
- Authorize the Tribal HUD VASH program to provide Native homeless veterans with housing and health care services;

- Re-create the Tribal Drug Elimination Program to provide grant funding to curb drug use and sales in reservation housing, additional police resources, housing counseling, and community gathering events;
- Make tribes eligible for the HUD Continuum of Care program;
- Reauthorize NAHASDA and 184 Loan programs through 2031;
- Increase the time of leasing of tribal land from 50 years to 90 years;
- Provide tribes with the ability to leverage NAHASDA dollars to match other funding sources. HUD has been implementing this on a regulatory basis, but the NAHASDA bill would create a statutory authority for leveraging funding; and
- Provide HUD with the authority to go after bad actors in connection with the Community Development Financial Institutions Fund (“CDFI”) which will protect tribes from fraudulent lenders.

The Committee staff noted that there are only a couple of months left in the 116<sup>th</sup> Congress, so the Committee is doing everything it can to ensure that the NAHASDA bill is moved forward as quickly as possible. For that reason, the Chair and Vice Chair of the Senate Committee on Indian Affairs are attempting to attach the NAHASDA bill to the National Defense Authorization Act (NDAA) bill, which is consistently passed every year. The Committee staff encourage tribes that are communicating with their senators to emphasize the importance of the NAHASDA bill. NAIHC is working with the House to move forward the House version of the NAHASDA bill there is still a ways to go on that bill.

One caller asked what it was that broke the logjam regarding the inclusion of the Native Hawaiian NAHASDA provision. The Committee staff noted that this provision remains in contention but the Committee is trying to move it forward through bipartisan discussion and the bipartisan support has helped with this progress.

Another caller asked whether the Committee has set up any virtual meetings with its members or whether it is conducting in person meetings with the public. The Committee staff noted that because of the rules regarding access to Senate offices, the Committee mainly uses virtual Zoom meetings or virtual calls during the COVID-19 pandemic. The Committee is trying to be as accessible as possible but in person meetings are difficult right now.

Another caller asked whether the NAHASDA bill could be amended to include a provision that would allow tribes to access Section 8 funding again. Mr. Walters noted that there is an opportunity to make changes to the Senate NAHASDA bill. However, the bill may be more likely to be passed as is without additional amendments, as Congress members would be more comfortable with a bill without numerous markups given the short timeframe for passing it.

***b. COVID-19 and Other bills***

On July 1, 2020, the House Democrats passed a \$1.5 trillion infrastructure bill which includes provisions that would provide funding for NAHASDA. The provisions include a requirement that 10% of the funding has to be used for clean energy. However, the Republican-controlled Senate has indicated that the infrastructure bill has little chance of advancing in the Senate.

All states are currently seeing an up-tick in COVID-19 cases, so Mr. Walters anticipates that Congress will make further progress on other COVID-19 legislative packages this summer. NAIHC is working to make sure tribes are included in bills that provide funding for states and local governments.

One caller noted that there are a number of new bills currently moving through Congress, such as H.R. 730, the Emergency Housing Protections and Relief Act, which would authorize nearly \$200 billion for emergency housing needs arising due to the COVID-19 pandemic. The caller recommended that tribal advocates not lose track of the smaller bills addressing Indian housing and focus attention on these smaller bills that may be easier to pass.

Another caller had a question as to what message tribes should convey as they are meeting with their Congress members regarding support for the Senate and House NAHASDA bills. Mr. Walters responded that both the Senate and the House NAHASDA bills are beneficial, and that the primary message to convey is that you support the NAHASDA reauthorization. Tribal advocates should make Congress members aware that there are two versions of the bill, but that both bills contain beneficial provisions.

On Wednesday, July 1, 2020, the House of Representatives passed S. 4116, a bill that extends the Paycheck Protection Program (“PPP”) application deadline to August 8, 2020. The PPP provides forgivable loans to businesses to help them prevent employees from being laid off. Tribal housing authorities are not eligible for PPP loans, but tribal housing programs or entities organized as non-profits under section 501(c)(3) of the Internal Revenue Code are eligible. Additionally, Native CDFIs should consider applying. The PPP was originally set to expire on June 30, 2020. The bill is now awaiting signature from the President.

***c. FY 2021 Appropriations & Housing Bills***

As noted in our last NAIHC memo, most other bills that would otherwise be moving through Congress are not progressing very quickly, including FY2021 Appropriations. The Tribal HUD-VASH or the Continuum of Care bills have not moved forward since February. One caller asked whether NAIHC has heard any discussion as to the timing of FY 2021 Appropriations. Mr. Walters replied that there will not be much flexibility on budget numbers for this year and that Congress may just pass the Appropriations based on last year’s budget numbers.

## **2. ICDBG CARES Act Imminent Threat Funding Approvals**

Mr. Walters received notice from HUD that it has started approving some of the ICDBG-CARES grants on a rolling basis and will continue to do so in the coming weeks. One caller noted problems caused by TDHEs that are submitting ICDBG-CARES applications on behalf of their tribes. Another caller agreed, reporting tribes have encountered problems with the tribal resolutions authorizing a TDHE to apply on their behalf and the required Bureau of Indian Affairs (“BIA”) certification of the TDHE acting as a tribal organization on behalf of the tribe. She noted that HUD has told tribes that they must resubmit their applications if the applications do not include the BIA certificate as an attachment to the tribal resolution.

HUD Implementation Notice PIH-2020-11 states that tribal organizations applying for ICDBG-CARES grants on behalf of tribes must submit a copy of their BIA eligibility determination with the application. Additionally, 24 CFR 1003.5(b) requires tribal organizations to obtain a tribal resolution authorizing the tribal organization to apply on the tribe’s behalf, which should also be included in the ICDBG-CARES application. The Notice states that any tribal organization that submits an ICDBG-CARES application but is unable to obtain a tribal resolution authorizing it to apply should request a waiver of the requirement in 24 CFR 1003.5(b) in the application.

Another caller raised a concern that because HUD is rolling out ICDBG-CARES grants on a first-come first-serve basis, and tribes that must resubmit applications because of problems may miss out on funding. He noted that it would be useful if HUD published updates on the amount of funding remaining to keep tribes informed. Mr. Walters commented that he will reach out to HUD and seek clarification on this issue.

## **3. Announcements**

The next two NAIHC Legislative Committee meetings are scheduled for Thursday, August 6 and Thursday, September 3. NAIHC will be moving this call to a Zoom platform for the next call. Mr. Walters noted that he will provide more specific information, if it is available, on non COVID-19 legislation (Tribal HUD VASH, Continuum of Care and FY 2021 appropriations) at the next meeting.

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If you have any questions about this memo, please contact Edmund Clay Goodman at [egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com) or at (503) 242-1745.