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MEMORANDUM

November 6, 2020

To: TRIBAL HOUSING CLIENTS

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

Re: *NAIHC Legislative Committee Meeting – November 5, 2020*

On November 5th, 2020, the National American Indian Housing Council (NAIHC) convened a Legislative Committee Call via Zoom. The meeting was presided over by NAIHC Executive Director Tony Walters. The next Legislative Committee Call is scheduled for December 3rd, 2020. The updates below are a synthesis of information provided during the call and other updates we have received.

I. Election Update

As many are aware, some states are still counting their votes for the 2020 election. We likely will not have final results for the presidential election, or for the House or Senate, for some days, if not longer. Mr. Walters noted that regardless of the election results, NAIHC has had a good relationship with U.S. Department of Housing and Urban Development (HUD) throughout the Trump administration and expects that relationship to continue during the next four years if the President is re-elected. HUD Assistant Secretary Hunter Kurts has been holding regular calls with tribes during the last few months and HUD has been more engaged with tribes during the COVID-19 pandemic. Mr. Walters also stated that if former Vice President Biden is elected, NAIHC will begin working with his transition team, and seek to have someone from his team speak at the NAIHC Legal Symposium.

Mr. Walters noted that the Biden team issued a transition plan memo for addressing issues in Indian Country. One caller asked whether the memo included any language on tribal housing. Mr. Walters responded that he would take another look at it and will circulate the memo to individuals who were on the call.

Another caller asked whether there was any news on the new makeup of the Senate Committee on Indian Affairs. Mr. Walters replied that Senator Tom Udall (D-NM) will no longer be the Vice Chairman, since he has retired from the Senate, and that this position will likely go to the new ranking committee member on the Democratic side. More information on the new Senate Committee on Indian Affairs should be available in the coming weeks.

II. Congressional Updates

a. FY 2021 Appropriations and the "Lame Duck" Session.

Congress is now in what is known as a “lame duck session,” the period of time after the elections but before January, when new Members of Congress (and/or a new Administration) are sworn in. The Senate will be back in session on Monday. Mr. Walters commented that Congress is sometimes able to accomplish a lot during the lame duck session. However, Congress’ progress will be limited with both Veterans Day and the Thanksgiving Holiday this month. He also noted that with the outcome of the election still undecided, and with a potential change in administration coming, it is hard to know whether it will be productive or not.

The Continuing Resolution (CR) that the House of Representatives and the Senate passed (HR 8337) to provide funding to keep federal agencies running ends on December 11, 2020. Congress will need to either adopt full-year appropriations bills or another CR on or before that date to keep the government from shutting down. There has been some discussion on both sides of the aisle to get a full-year funding agreement finalized and adopted, but the prospects of doing so are still not clear, particularly with the ongoing uncertainty about the election.

With this 116th Congress ending, all tribal housing bills that are not passed before Congress adjourns for good would need to be re-introduced next session. NAIHC will continue its efforts to advocate that funding for tribal housing is increased for the next year, in addition to its efforts to advocate that other tribal housing bills are passed.

b. Coronavirus Relief.

Congress is still considering a new Phase 4 COVID-19 relief package. Prior versions of the bill discussed funding of \$1 trillion (Senate bill) and \$2.2 trillion (House bill). However, the Senate did not seem interested in moving those packages forward this fall. That may change in the coming months, as Senator Mitch McConnell (R-KY) has stated that COVID-19 relief is a priority. There have been no updates in the last few days, but NAIHC will continue to keep an eye on the legislation and will provide updates as they become available.

One caller asked whether there were any mentions of tribal housing in either the House or Senate versions of the next relief package. Mr. Walters noted that the last version of the House HEROES Act bill provided for a \$1 billion tribal set aside, which included mortgage and rental assistance and funding for the Indian Housing Block Grants (IHBG) Program and Indian Community Development Block Grants (ICDBG) Program.

- \$400 million for tribal housing programs
 - \$150 million for IHBG
 - \$250 million for ICDBG

- Emergency Rental and Utilities Assistance
 - \$50 billion total

- \$1 billion for tribes through set aside (2%)
- 3 years to spend funding
- Mortgage Assistance
 - \$21 billion total
 - \$1.05 billion for tribes through set aside (5%)
 - 10 years to spend funding

In contrast, the Senate version of the Phase 4 relief package, the HEALS Act released July 28, 2020, did not include any tribal housing funding or tribal set aside (see our memo of July 30, 2020).

Both the House and Senate versions of the Phase 4 relief package will likely provide for extensions of deadlines for use of CARES Act Coronavirus Relief Fund (CRF) funding for both states and Tribes, since the original and still current deadline is December 30, 2020. The CARES Act IHBG and ICDBG funding provided through HUD will have a much longer deadline than the CRF funding. NAIHC will determine what the deadlines are for various CARES Act funding and will provide an update in the coming weeks.

c. Indian Housing Legislation

The Native American Housing Assistance and Self Determination Act (NAHASDA) reauthorization bills in both the House and Senate have not moved forward since our last update. Mr. Walters said that it is unlikely that a NAHASDA reauthorization bill will be passed during this Congress, but NAIHC will continue its efforts to advocate for both House and Senate versions of the bills in the meantime. NAIHC hopes that tribes and tribal advocates provide as much support as possible for both bills, either as standalone bills or as amendments to other separate bills. We understand that during the lame duck session there will be another push to get a NAHASDA reauthorization bill passed. If neither bill is passed this year, the NAHASDA bills will need to be reintroduced in during the next Congress.

As we noted in our October 2nd memo, we continue to see little progress on the Tribal HUD-VASH bill or the Continuum of Care bill. The Tribal HUD-VASH bill passed the Senate twice and is now being considered in the House. There will be a similar push during the lame duck session this fall to have the Tribal HUD-VASH bill pass in the House as a standalone bill. Additionally, the Continuum of Care bill (HR 4029) has not progressed since February 2020. The bill passed the House and is still being considered by the Senate. The bill would make tribes eligible for the HUD Continuum of Care Program. NAIHC is continuing its advocacy efforts on both bills and will be reaching out to HUD to see what support NAIHC can provide to move the bills forward. Mr. Walters is hoping still that these bills can be passed this session.

d. Section 184 Program

Mr. Walters reported that there was briefly an issue with the Bureau of Indian Affairs (BIA) regarding information on mortgages on Trust land under the Section 184 Program.

Section 184 is a statutory loan guaranty program through which HUD provides a guaranty of loans originating from private lenders to purchase a home (a tribal member or tribal housing program can get such a guaranty). The issue appeared to be that BIA wanted to redact certain information for Trust land mortgages from certified status reports for mortgages on Trust land, citing mortgage concerns. Lenders were concerned with BIA's intent to redact information, and in the last week, HUD has been working with BIA to resolve the issue. Mr. Walters reported that it appears that the situation has been resolved and will revert back to status quo. NAIHC will provide further information about this situation if it becomes available.

One caller noted that the Center for Indian Country Development, launched by the Federal Reserve Bank of Minneapolis, has developed a new portal that provides lenders with the opportunity to look up the statuses of mortgage packages. The new portal produces a report that will inform lenders about where a particular mortgage package is in the process. It should provide assurance to lending industry about mortgage packages in Indian country being processed on time. The caller noted that he assumes that any tribes or tribal housing authorities that have their own mortgage program will be able to use the portal as well. Mr. Walters noted that the Senate and BIA have talked about such a portal before that would allow tribes and lenders to obtain more information about the mortgage process.

III. HUD Grants and Requirements

a. HUD FY2020 NOFA for IHBG Competitive Grant Program

As we noted in our October update, on August 11, 2020, HUD published a Dear Tribal Leader Letter, announcing the fiscal year (FY) 2020 Notice of Funding Availability (NOFA) for the IHBG-Competitive Grant Program. The Letter stated that projects that will spur housing construction and rehabilitation will be prioritized. Because of the challenges arising from the ongoing COVID-19 pandemic, HUD is providing a longer application period than the application period in last year's competition to allow applicants additional time to develop and submit applications. Therefore, applicants will have until 11:59:59 EST on December 10, 2020, to submit applications via <https://www.grants.gov>. If applicants are unable to submit an electronic application, they may request a waiver in accordance with Section IV.A. of the NOFA <https://www.grants.gov/web/grants/view-opportunity.html?oppId=328626>.

b. CARES Act Report Requirements

On October 23, 2020, HUD released a Dear Tribal Leader Letter on CARES Act Reporting Requirements. The Dear Tribal Leader Letter outlines CARES Act reporting requirements for IHBG-CARES and ICDBG-CARES funding for recipients of funding that exceeds \$150,000 in aggregate. The CARES Act reporting is due 10 days after the quarter's end (i.e., July 10th, October 10th, January 10th, and April 10th). HUD Office of Native American Programs (ONAP) will be developing and providing training to tribes on new reporting systems and the reporting requirements. The Dear Tribal Leader Letter can be read in full at the link below: <https://www.hud.gov/sites/dfiles/PIH/documents/Dear%20Tribal%20Leaders%20-%20CARES%20reporting%20-%20final.pdf>. HUD issued a follow-up Dear Tribal Leader Letter

with details about training on the CARES Act reporting requirements and to introduce the Federal Funding Accountability and Transparency Act (FFATA) referenced in the CARES Act. The first training will be held on November 12, 2020 at 1:00 PM Eastern Time. Further details can be found at the link below:

https://www.hud.gov/sites/dfiles/PIH/documents/CARES_Act_Reporting_Training_11-4-20.pdf.

c. HUD FY2020 Choice Neighborhoods Implementation Grant Program

On August 24, 2020, HUD posted information on the FY2020 Choice Neighborhoods Implementation Grant Program. Indian housing authorities are eligible to apply. The application deadline is 11:59:59 pm Eastern Standard time on December 16, 2020. The Choice Neighborhoods Implementation Grant Program provides funding for communities to implement plans to redevelop distressed public and/or assisted housing and neighborhoods. A public housing authority, local government or tribal entity must be the lead applicant. For more information, email ChoiceNeighborhoods@hud.gov or visit <https://www.grants.gov/web/grants/view-opportunity.html?oppId=328780>.

IV. Other Matters

a. National Congress of American Indians Annual Convention

Nicholas Courtney, Director of Policy at the National Congress of American Indians (NCAI) noted that NCAI will be virtually holding its Annual Convention & Marketplace on November 8-13, 2020. Mr. Courtney noted that NCAI will accept resolutions to be considered at the Convention until Tuesday, November 10th 12:00 PM PDT and will be considered if they are national in scope and emergency in nature. Late resolutions will be referred to the NCAI Executive Committee to be determined if the resolution is national in scope and emergency in nature.

There are currently two resolutions to be considered by the NCAI Housing Subcommittee. The first, Resolution #PDX-20-012, addresses support for Native Homeownership opportunities on Trust Land through the U.S. Department of Agriculture 502 Relending Demonstration Program. The second, Resolution #PDX-20-048, advocates for allocating HUD-NAHASDA housing training funds directly to Tribes, Tribally Designated Housing Entities, and Tribal Organizations. More information about both resolutions can be found on the NCAI webpage. <https://www.ncai.org/resolutions/2020-annual>. The NCAI Congress will also discuss such topics as the transition plan for the upcoming switch in administration and the proposal for the position of Deputy Assistant Secretary of Native American Programs Housing to be elevated to Assistant Secretary.

One caller asked about whether individuals must be registered for the full convention in order to access the Convention committee meetings. Mr. Courtney responded that the Task Force meetings that will be held on Sunday, November 8th are free to attend. However, individuals must be registered for the full Convention in order to attend the committee and subcommittee meetings. To vote in the Convention, individuals must be an NCAI member and

be an American Indian or Alaska Native. The Convention schedule and other information can be found at the below link:

<https://web.cvent.com/event/65b39c79-2bb2-4af1-8345-8a30a611c2ae/websitePage:645d57e4-75eb-4769-b2c0-f201a0bfc6ce>.

Another caller noted that the Convention will include two sessions on increasing capital for tribal nations and communities. One session will cover the Community Reinvestment Act in Indian Country, while the other session will cover tribal nations' development of strategic plans to recover economically from the coronavirus and the importance of centering private sector development in tribal economic recovery strategies. Both sessions will include speakers from the Federal Reserve System. The caller noted the importance of ensuring that there is enough capital for tribal housing.

b. NAIHC Legal Symposium.

The NAIHC Legal Symposium will be held on December 7th, 8th, and 9th of 2020. Due to the COVID-19 pandemic, the Symposium's sessions will be held virtually to allow greater (and safer) participation. The Symposium will include content on reporting for CARES Act funding. Mr. Walters encouraged anyone who has recommendations on content to reach out to NAIHC. The Symposium will be four hour blocks each day presented through a main stream of live feed, with breakout sessions to cover a number of topics. NAIHC will be sending out more information on the Symposium today or tomorrow. NAIHC also plans to provide crowd-source content; if anyone wants to submit a 5-10 minute video, NAIHC will make that available during conference.

c. Announcements

NAIHC has developed an updated website so that all bills related to COVID-19 relief will be listed for tribal members to look through, located at the following site: <http://naihc.net/covid-19-resource/>. The next two NAIHC Legislative Committee meetings are scheduled for Thursday, December 3rd, and Thursday, January 7th, 2021. NAIHC will continue to host the call via a Zoom platform for the next call.

Conclusion

If you have any questions about this memo, please contact Ed Clay Goodman at 503-799-3924 or at egoodman@hobbsstrauss.com.