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MEMORANDUM

May 7, 2021

To: TRIBAL HOUSING CLIENTS

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

Re: *NAIHC Legislative Committee Meeting – May, 2021; Other Updates*

On May 6, 2021, the Native American Indian Housing Council ("NAIHC") convened its monthly Legislative Committee Call via Zoom. NAIHC Executive Director Tony Walters presided over the meeting. The updates below are a synthesis of information provided during the calls and other updates we have received regarding coronavirus ("COVID-19") relief.

I. Congressional Updates

a. Update on 117th Congress and Fiscal Year 2022 Appropriations

Congress is continuing its work on the Fiscal Year ("FY") 2022 Appropriations process. In normal years, Congress would have released a full proposal by now, but Congress was delayed in starting the appropriations due to focusing most of its efforts earlier this year on the confirmation hearings for President Biden's cabinet members and the American Rescue Plan Act of 2021 ("ARP Act"), the latest COVID-19 relief bill. Mr. Walters commented that Congress has not released the budget justification document yet, but the FY 2022 budget proposals has allocated \$900 million for tribal housing. This amount may be a consolidated number for all programs funded under the Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA"). NAIHC has used an inflation index to estimate tribal housing should be receiving around \$1 billion per year to adjust for inflation. The \$900 million in the proposed FY 2022 Appropriations is close to that, which is promising and better than in past administrations. However, tribes have been missing out on about \$2.5 billion over the last decade or so because the NAHASDA amount was not increased to adjust for inflation. Because of this, NAIHC is working with Congress to advocate that the FY 2022 Appropriations include a higher amount for Tribes.

b. Current Bills with Tribal Housing Impacts

Congress is also working on another bill that would include funding for tribal housing, the American Housing and Economic Mobility Act (S.1368, HR. 2768). This bill includes a provision that reauthorizes NAHASDA for ten (10) years and provides \$2.5 billion in funding for NAHASDA in the first year. The bill would also allow tribes to access the U.S. Department of Housing and Urban Development ("HUD") Section 8 housing vouchers, which provide additional

housing assistance to eligible families. Tribes are not currently eligible to access Section 8 housing vouchers. NAIHC is continuing to advocate that Congress remove any restrictions that keep tribes from participating in various HUD programs such as the Section 8 Voucher Assistance.

The main issue that Congress is currently working on is an infrastructure bill. Under the narrative of the bill released by the Biden Administration on March 31, 2021, the bill would appropriate \$2 trillion in funding for infrastructure and would provide \$213 billion for the development of affordable housing. The House Financial Services Committee drafts of the bill included \$2 billion for the Indian Housing Block Grant ("IHBG") program. NAIHC is working with congressional members to make sure tribes are included in the infrastructure bill and that the funding for tribes is structured as block grants. NAIHC will also push for the tribal set-aside to be increased above the proposed \$2 billion, as NAIHC estimates that \$33 billion is needed for tribal housing infrastructure. Mr. Walters commented that while the proposed \$2 billion is far below the needed amount, it is at least higher than provided in other infrastructure bills passed in previous years.

One participant commented that out of the \$213 billion allocated for affordable housing under the current draft bill, roughly \$70 billion would be allocated for renovation of federally assisted housing. Congress has not yet released information on whether this funding would include a tribal set-aside, but tribes would benefit greatly from receiving additional funding to be used for capital improvements. Mr. Walters commented that NAIHC has been having ongoing conversations with Congress to educate them on why tribes need additional funding for capital improvements, beyond what is provided through the IHBG and Indian Community Development Block Grant ("ICDBG") programs.

Further information on the infrastructure bill is not yet available, and Congress is still debating the actual amount appropriated for the bill. Current details on the infrastructure bill can be found [here](#).

c. Other Tribal Housing Priorities Updates

The Senate Committee on Indian Affairs is focusing its attention once again to the reauthorization of NAHASDA. Chairman of the Committee Sen. Brian Schatz (D-HI) and Vice Chairman of the Committee Sen. Lisa Murkowski (R-AK), as well as other Committee members, are trying to move the NAHASDA bill out of committee and onto the Senate floor for consideration. Rep. Gwen Moore (D-WI) recently discussed NAHASDA in the House Financial Services Committee, advocating that Congress pass the NAHASDA bill. NAIHC is in the midst of conversations with other congressional members on the bill, advocating that Congress draft the bill to be similar to the bi-partisan version last year.

Regarding the tribal HUD Veterans Affairs Supportive Housing ("HUD-VASH") program, the 117th Congress has yet to introduce a bill. The tribal HUD-VASH would provide assistance and supportive services to Native American veterans who are homeless or at risk of homelessness. The tribal HUD-VASH bill would codify and make permanent the tribal HUD-VASH program within the larger HUD-VASH program and ensure adequate funding for the program. The bill would also make all tribal nations and their tribal housing programs eligible for the HUD-VASH

program. NAIHC is working with lead congressional sponsors to have the bill drafted and Mr. Walters participated in veterans' roundtable with the Senate Committee on Veterans Affairs to push for the Tribal HUD-VASH bill. NAIHC is focusing its advocacy on increased tribal housing stock, as housing shortages are a severe problem in tribal communities. NAIHC is also focusing on advocating for tribal access to supportive services and increased eligibility for tribal veterans for supportive services.

II. Grants and Administration

a. Emergency Rental Assistance Program

As we noted in our April memorandum, on December 27, 2020, as part of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260, Division N § 501, Dec. 27, 2020) (the "Act"), Congress passed, and the President signed, an updated COVID-19 relief package that included \$25 billion for the Emergency Rental Assistance program ("[ERA Program](#)"). Tribes received an \$800 million set-aside from this fund to assist eligible households who are facing eviction due to unpaid rents and utilities, or the inability to pay prospective rents and utilities. While the allocation of tribal funding was determined by the annual IHBG formula operated by HUD, the ERA Program itself is overseen by U.S. Department of Treasury ("Treasury").

On January 19, 2021, Treasury published an initial set of Frequently Asked Questions ("FAQs") to serve as guidance for the ERA Program. On February 22, 2021, Treasury published a revised set of FAQs that replaced and superseded the prior version. On March 16, 2021, and again on March 26, 2021, Treasury released additional updates to the FAQs. Further, on March 26, 2021, Treasury released an amended set of ERA Program grantee award terms, ("Amended Award Terms") which include further information on the applicable limitations on administrative expenses. The updated FAQs are available by clicking [here](#).

NAIHC will send out a survey in the next week or two to tribes to gauge how the ERA Program is working and how it is being used by tribes. NAIHC would like as much data as it can obtain in order to ensure that it is advocating for the right solutions.

Treasury continues to seek input and provide guidance for the ERA Program. Any Tribal leader with questions may submit them to EmergencyRentalAssistance@treasury.gov.

b. Treasury's Homeowner Assistance Fund

The ARP Act that President Biden signed into law on March 11, 2021, provides for approximately \$500 million in funding to tribes for the Homeowner Assistance Fund Program ("HAF Program"). The HAF Program will provide mortgage assistance to homeowners to prevent foreclosure or post-foreclosure eviction of a homeowner due to the COVID-19 pandemic. The HAF Program will be operated in a manner similar to Treasury's ERA Program, but will be focused on homeowners in economic distress at risk of losing their homes. However, unlike the ERA Program, the HAF Program does provide for use of the higher of either the local or national area median income ("AMI").

While the funding for the HAF Program will be allocated through the Treasury for distribution, HUD has been advising Treasury on how to work with tribes and tribal housing programs. Allocations will be based on the IHBG formula for FY 2021. On April 14, 2021, Treasury released its initial guidance ("Treasury Guidance") on the HAF Program, which can be found [here](#). Treasury has also indicated more recently that they are planning to issue tribal-specific guidance in the near-future.

Tribes or TDHEs who want to receive HAF funding must submit a Notice of Request for HAF funding. A copy of that form is attached, and is available at the following link: <https://home.treasury.gov/system/files/136/HAF-Notice-of-Funds-Request.pdf>. The deadline for tribes or TDHEs to submit that Notice is September 30, 2021. Treasury will also require that the tribe or TDHE, as a condition of receiving the funds, sign a Financial Assistance Agreement: https://home.treasury.gov/system/files/136/HAF-Financial-Assist-Agmt_0.pdf. Treasury will make initial payments to tribes or TDHEs in the amount of ten percent (10%) of the allocated HAF funds. In order to receive the remaining 90 percent (90%) of HAF funds, the tribe or TDHE must submit a plan for its use of the HAF Program funds. The Treasury Guidance provides flexibility to tribes to tailor their HAF Program plans to their tribal communities. Additionally, tribes and TDHEs that receive less than \$5 million in HAF funds will have reduced planning requirements. Treasury has not yet published tribal allocations. Further details will be forthcoming in future Treasury guidance.

Tribes must go to a Treasury portal to claim their allocation of HAF Program funds. The portal went live on May 5, 2021 and the portal website link can be found in the portal instruction manual ("Instruction Manual") that Treasury issued, attached to this memorandum. Treasury is still fixing some early issues with the portal website link, so if you are unable to access the site, check back again in a few days. One participant commented that rather than creating a custom portal, Treasury is piggy-backing on other program portals. Because of this, the participant encouraged Tribes to review that Instruction Manual before applying, as tribes may need to obtain information from different tribal departments for the application.

An additional issue is that Treasury may be sending HAF Program information to the tribal contacts that Treasury has in its database rather than to tribal housing contacts. Tribal housing staff should reach out to other tribal points of contact to make sure that they send any HAF Program information they receive to the tribal housing.

Mr. Walters commented that Treasury is open to consultation and NAIHC is working with Treasury to obtain more guidance on the HAF Program. He noted that the HAF Program should be a benefit to tribes, as many tribes indicated that tribal homeowners have needed help during the COVID-19 pandemic.

One participant noted that the United Native American Housing Association ("UNAHA") has created training and technical assistance videos on a number of the new COVID-19 housing programs. UNAHA is currently trying to see if it can obtain HUD funding for its training in order to share the training with other tribes. Mr. Walters noted he has also had conversations with HUD about providing funding for tribal housing training and will continue to push for additional funding.

Mr. Walters commented that NAIHC is interested in seeing any policies that tribes have created for either the ERA Program or HAF Program. NAIHC would like to share the policies with other tribes.

c. HUD Programs

The ARP Act also provides \$450 million for the IHBG program ("IHBG-ARPA"), \$280 million for the ICDBG program ("ICDBG-ARPA"), \$5 million for the Native Hawaiian Housing Block Grant program ("NHHBG-ARPA"), and \$10 million for related technical assistance resources. On April 14, 2021, the HUD Office of Native American Programs ("ONAP") issued its implementation guidance on the use of the IHBG-ARPA funds, which guidance is available [here](#). The allocations for the IHBG-ARP funding are based on the 2021 IHBG formula. HUD-ONAP has released a chart showing the allocations of such funding, which is available [here](#). Additional information on the HUD programs funded through the ARP Act can be found on the HUD-ONAP website and [here](#).

One participant asked whether HUD has released updated deadlines for the ARP Act funding allocated through HUD programs. Mr. Walters commented that he has not yet heard of updated deadlines but will provide that information when it becomes available.

III. Other Matters

The next in-person NAIHC event will be a legal symposium held in December 2021. NAIHC sends out a native housing newsletter every two (2) weeks. Mr. Walters recommends that any tribe who does not currently receive the newsletter to go to the NAIHC website to sign up for it.

The NAIHC Legislative Committee meetings will continue to be held the first Thursday of each month. The next NAIHC Legislative Committee meetings will be held on June 3, and July 8, 2021. Anyone who would like to submit questions prior to the calls may do so through the link provided in the NAIHC email sent out prior to each call. Sending in questions and comments ahead of time allows NAIHC to provide detailed responses during the call. NAIHC will continue to host the calls via a Zoom platform. Mr. Walters encouraged participants to reach out to NAIHC staff with any questions or comments. Participants may do so by sending an email to Twalters@naihc.net. NAIHC will be providing the Power Point and recording of this call on its website.

NAIHC will continue to provide virtual trainings. Mr. Walters encourages NAIHC members to use the virtual trainings and provide feedback.

Conclusion

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