



MEMORANDUM

June 7, 2021

To: TRIBAL HOUSING CLIENTS

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

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

On June 3, 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 COVID-19 relief.

I. Congressional Updates

a. 117th Congress Fiscal Year 2022 Appropriations and the Presidents 2022 Budget

Congress is continuing its work on the Fiscal Year (“FY”) 2022 Appropriations process. The Biden Administration released its proposed FY 2022 budget (“Budget”) on May 28th, 2021, the Housing and Urban Development (“HUD”) component of which contains proposed funding levels for Indian housing. Overall, the budget requests \$1 billion for Indian housing programs, over \$175 million more than the amounts appropriated for FY 2021. Below is a breakdown of the proposed amounts compared to prior years

Programs	FY 2020	FY 2021	FY 2022 Budget Request	NAIHC Recommendation
Indian Housing Block Grants (“IHBG”)	\$646 million	\$647 million	\$723 million	\$966 million, at least \$755 million
Competitive IHBG	\$100 million	\$100 million	\$100 million	
Climate Initiative			\$100 million	
Training and Technical Assistance Grants	\$7 million	\$7 million	\$7 million	\$7 million
Indian Community Development Block Grant (“ICDBG”)	\$70 million	\$70 million	\$70 million	\$100 million
Title VI Loan Guarantee	\$2 million	\$1 million	\$0 **	\$2 million
Section 184 Loan Guarantee	\$1.6 million	\$2 million	\$3.5 million	\$10 million
Native Hawaiian Housing Block Grant (“NHHBG”)	\$2 million	\$2 million	\$7 million	\$20 million

Tribal HUD Veterans Affairs Supportive Housing (“HUD-VASH”)	\$1 million	\$5 million	\$5 million	\$7 million
Housing Improvement Program (“HIP”)	\$11.7 million	\$11.7 million	\$11.7 million	\$23 million
USDA Rural Development 502 Single Family Direct Loan	\$1 billion *general, not Tribal specific	\$1 billion * general, not Tribal specific	\$1 billion * general, not Tribal specific	\$1 billion (general) with Tribal set-aside

(** HUD indicates that existing program funds are sufficient to carry out these activities)

As shown above, the Budget would provide \$723 million for the IHBG formula program, \$76 million more than was appropriated for FY 2021. Mr. Walters remarked that this would be the first increase to the base IHBG formula in twenty (20) years. This Budget request also includes an additional \$100 million for competitive IHBG grants and another \$100 million for a new Climate Initiative—\$50 million in Tenant-Based Rental Assistance and \$50 million in Project-Based Rental Assistance. This additional \$100 million would come from the \$800 million in HUD’s Budget specifically directed to resilience and energy efficiency, and is targeted solely at Indian housing. This funding proposal would allow tribes/TDHEs to “retrofit approximately 16,600 Indian housing units that require a moderate amount of work to become more energy efficient.” Mr. Walters commented that the Climate Initiative may be a competitive grant. There have been continual questions on over the years as to how Tribes can address climate change in their housing programs. Mr. Walters noted that one method is to build or retrofit homes to be energy-efficient. While building energy-efficient homes requires higher costs up-front, it is better in the long term as it helps tenants meet rising energy costs. The Climate Initiative should help Tribes with this, as the Initiative is intended to be flexible to address different Tribal needs.

The Budget also requests \$70 million for the ICDBG program, which is equal to the FY 2021 enacted level. This amount includes \$66 million for single-purpose grants and up to \$4 million for imminent threat grants. The Budget also requests \$3.5 million for the Indian Housing Loan Guarantee Fund (also known as Section 184) program, which is \$1.5 million more than the 2021 enacted level. The Budget requests \$7 million for training and technical assistance, equal to the FY 2021 enacted level. Within the Public Housing Fund, the Budget provides \$25 million for grants to remove lead-based paint hazards from public housing and \$25 million to help Housing Authorities to identify and eliminate other housing-related hazards, such as mold, carbon monoxide, pest infestation, radon, lead-based paint, and other housing hazards.

Additionally, the Budget proposes \$175 million for Self-Sufficiency Programs: \$120 million for Family Self-Sufficiency (“FSS”), which will fund approximately 1,500 coordinators to “support the FSS program aim of increasing participants’ earned income and reducing or eliminating their need for assistance[;]” \$20 million for the Jobs Plus Initiative (“JPI”), to fund up to 10 grants for JPI, “in order to increase employment opportunities and earnings of public housing residents through employment services, rent-based work incentives, and community support for work[;]” and \$35 million for the Resident Opportunity and Self-Sufficiency (“ROSS”) to fund existing ROSS service coordinators who provide resident services. The Budget also adds in

\$268.9 million for salaries and expenses, which in combination with FY 2021 funding, HUD hopes to support 1,448 fulltime equivalents.

Funding proposals for other programs includes \$1.5 billion for U.S. Department of Agriculture (“USDA”) 502 Direct Loan Program, which is an increase of \$500 million. The program assists low- and very-low-income applicants obtain decent, safe, and sanitary housing in eligible rural areas by providing payment assistance to increase an applicant’s ability to repay loans. Mr. Walters commented that NAIHC hopes that this program can become effective in Indian country. The Budget also provides \$11 million for the Bureau of Indian Affairs’ (“BIA”) HIP, which is an increase compared to prior years. The HIP is a home repair, renovation, replacement and new housing grant program for American Indians and Alaska Native individuals and families who have no immediate resource for standard housing.

There is still a long way to go before the appropriations are passed. The Budget request from the Administration simply kicks off the appropriations process, and is not a final commitment or an appropriation of funds. The Budget must still head to Congress where the House and Senate Budget Committees will examine and refine the details of the proposed budget, and then develop their own budget resolutions to be voted upon individually, which must be adopted by both the House and the Senate. The adopted budget resolution must then be crafted into appropriations bills that will fund the individual programs.

Mr. Walters commented that the proposed amount for Tribal housing still does not meet the amount of funding needed to meet current needs, but it is an improvement compared to funding amounts in past years. NAIHC is pleased to see a reverse of the trend of stagnant Native American Housing Assistance and Self-Determination Act of 1996 (“NAHASDA”) numbers. As far as the IHBG formula grant funding, Mr. Walters commented that that amount is tied to the funding to levels of 1996, when NAHASDA was first passed. The IHBG formula grant amount should have increased to \$966 million for this year to compensate for inflation. NAIHC would like feedback on how the Budget does or does not meet Tribal needs. NAIHC wants to make sure that HUD housing programs work well for Tribal needs and will advocate for these needs in its work with Congress.

One participant asked whether Tribes and Tribally Designated Housing Entities (“TDHEs”) should advocate for the IHBG Competitive grant amount to be raised to at least \$112 million, with the same twelve percent (12%) increase seen in the IHBG formula amount. Mr. Walters replied that NAIHC would advocate for such an increase. He noted that the NAHASDA bill introduced in the Senate during last year’s Congress would have increased the IHBG Competitive grant amount to correlate with inflation. NAIHC is advocating that a similar increase be included in the new NAHASDA bill being discussed this year.

In the coming weeks, NAIHC will be sending out requests for letters from Tribes on any feedback on or concerns about the Budget. Mr. Walters encouraged Tribes to email them about any specific issues they would like addressed.

b. Update on Other Tribal Housing Bills

The Senate Committee on Indian Affairs (“Committee on Indian Affairs”) is focusing its attention once again on 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. There were two bills introduced last year, one in the House and one in the Senate. Mr. Walters commented that both bills included promising provisions.

This year, the Senate is close to introducing a new NAHASDA bill, which will likely be similar to last year’s bill. NAIHC is optimistic that sponsors of the bill will urge other members of the Committee on Indian Affairs to move the bill out of Committee and onto the Senate floor for full consideration. The bill will likely be attached to another, larger bill in order to be passed. Last year, the Senate tried to attach the NAHASDA bill to annual defense authorization act that is required to be passed each year. The House is not as close to introducing its version of the NAHASDA bill. This is due in part to the fact that the House Financial Services Committee, which is the Committee drafting the bill, does not have many House representatives with large Tribal constituents. The House Financial Services Committee members also do not have as much experience with Tribal housing as the members of the Committee on Indian Affairs. NAIHC is considering which members of the house to approach to be sponsors of the NAHASDA bill.

Regarding the Tribal 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 expects the Tribal HUD-VASH to be included in Senate NAHASDA bill.

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 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 Senate Committee on Banking, Housing, and Urban Affairs’ (“Banking Committee”) Housing, Transportation, and Community Development Subcommittee the held a hearing on May 27, 2021 that was focused entirely on Tribal housing issues. This is the first time that the Banking Committee has focused on Tribal housing. The Banking Committee discussed the overall funding

levels of existing Tribal housing programs and methods of encouraging outside entities to invest in Tribal developments. Senators Tina Smith (D-MN) and Mike Rounds (R-SD) expressed interest in the USDA 502 Program, which implemented a successful pilot program with Tribes in South Dakota. NAIHC and some Tribes testified at the hearing and highlighted some of the ongoing needs in Tribal housing. Mr. Walters noted that the hearing was productive, yielding increased Senate interest in Tribal housing. During the hearing, NAIHC focused on the impact that stagnant funding levels has had on Tribal housing, creating housing shortages, overcrowding, and a significant number of older homes requiring maintenance and rehabilitation. A recording of the hearing can be found [here](#). One of the NAIHC call participants noted that the record is open for 48 days after hearing for anyone to submit written comments.

Another participant asked whether NAIHC will be sending a follow up letter/white paper to expand on and provide more detail on the issues raised during the hearing. Mr. Walters commented that NAIHC will work on such a letter to expound on the testimony it presented at the hearing.

A third participant asked whether there are any strategies that Tribal advocates can use to capitalize on the hearing. Mr. Walters commented that Tribal advocates should send NAIHC any comments and feedback in the coming weeks, which NAIHC will incorporate into any follow-up it provides the Banking Committee.

II. Grants and Administration

a. Emergency Rental Assistance Program

As we noted in our prior memorandums, on December 27, 2020, as part of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260, Division N § 501, Dec. 27, 2020), 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. On May 7, 2021, Treasury issued updated guidance on the ERA Program. The updated FAQs are available by clicking [here](#).

The American Rescue Plan Act of 2021 (“ARP Act”), the latest COVID-19 relief bill, extended the deadline for Tribes to spend funds to September 30, 2022. However, the Tribes still must spend 65% of their funding by September 30, 2021. This is a statutory deadline that Treasury

has indicated it cannot change. One participant asked whether Treasury has issued any further guidance regarding how it will recapture funds not expended September 30, 2021. Mr. Walters commented that NAIHC is working with Treasury to delay any recapture and is seeking more information on what factors Treasury will use to determine whether or not to recapture funds from Tribes and TDHEs. NAIHC is also seeking more clarity from Treasury as to how the reallocation process will work. Mr. Walters encouraged Tribal grantees to keep implementing their ERA Programs in the meantime. He noted that because internet services are included in eligible costs under the ERA Program, Tribes may be able to expand the number of participants in their programs by providing assistance for internet services.

NAIHC is continuing to work with ERA Program grantees to understand the overall issues grantees are facing and how the ERA Program can be streamlined to work with Tribal housing needs. Mr. Walters noted that nontribal grantees across the nation are using fact-based proxies to minimize documentation burdens. Tribes and TDHEs may rely on a reasonable fact-specific proxy to document household income, such as reliance on data regarding average incomes in the household's geographic area. However, even with the ability to use proxies, Tribes have commented that the ERA Program documentation requirements still remain burdensome. NAIHC continues to work with Treasury to figure out how Tribes can increase the use of proxies to minimize the documentation burden. NAIHC is also seeking further clarity from Treasury on how Tribes and TDHEs can use funds for housing stability services and administrative costs.

Mr. Walters commented that NAIHC sent a survey out a few months ago on the ERA Program and received a 75 percent (75%) response rate from NAIHC members. Many members responded that their ERA Programs have been successfully implemented. However, a significant number of Tribes expressed uncertainty about whether Tribes would be able to expend their ERA Program funds by the deadline. They noted that it is a significant amount of money to spend on rental assistance in such a short amount of time. This is particular true for those Tribes that did not implement their ERA Programs until March or April of this year, as they were waiting to receive additional Treasury guidance on the Program implementation. Treasury has released numerous FAQs, which makes it difficult for Tribes to stay up to date with the changes in guidance. NAIHC will send out another survey in a few months to obtain an update on how Tribes are implementing their ERA Programs.

One participant asked whether ERA Program funds can be used for home rehabilitation. Mr. Walters remarked that he is not aware of any Treasury guidance that addresses this, but that it is unlikely that home rehabilitation will be an eligible expense. Mr. Walters also remarked that Treasury has made it clear that ERA Program funds may not be used to assist homeowners. He further commented that ERA funds can only be used to pay rent that is current due or past-due. Any rent that has been waived by landlords is no longer eligible to be covered under the ERA Program.

b. Treasury's Homeowner Assistance Fund

The ARP Act also provides 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 the 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. 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 HUD has been somewhat silent regarding the HAF Program. They asked whether NAIHC will be providing any further information on the program. Mr. Walters commented that NAIHC has had difficulty obtaining any answers on the HAF Program from either HUD or Treasury. NAIHC has been working with Treasury to obtain more clarification on the HAF Program. Mr. Walters further remarked that some HAF funds are available to provide training and technical assistance. NAIHC is working with Treasury to make sure that Tribes are included in any training and technical assistance.

One participant commented that her Tribe has received their initial ten percent (10%) allocation. She commented that the most difficult part of the process was obtaining the account. She has heard that Treasury would be requiring a specific format for the plan that Tribes must submit in order to receive the remaining 90% of the funds. However, Treasury has not yet released any such template plan. The participant noted that part of the registration process is providing

bank account information, and the funds are deposited directly into the Tribe or TDHE's bank account once they have established the account.

Another participant from the Department of Hawaiian Homelands ("DHHL") commented they have also received their initial ten percent (10%) allocation. However, Treasury has indicated that there will be reduced plan format for any Tribes receiving less than \$500 million. The participant noted that DHHL is still seeking clarification on what the particular plan format will be.

A third participant asked how the Tribes obtain the HAF funds. Mr. Walters commented that if the Tribal housing staff has not yet received an email from Treasury, they should reach out to any Tribal government contacts who may have received that email from treasury. Treasury may be sending HAF Program information to the Tribal contacts that Treasury has in its database rather than to Tribal housing contacts.

Additional information on the HAF program can be found [here](#).

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 NAIHC has an update on publication of the funding notice for the ICDBG-ARPA or regular ICDBG. Walters responded that NAIHC is engaging in regular discussions with HUD on these matters. As of right now, HUD has not yet published notices of funding availability ("NOFAs") for any of those funding sources. HUD is prioritizing the NOFA publications in following order: ICDBG-ARPA, the regular ICDBG grant, and then the ICDBG Competitive grant. HUD is targeting sending out the NOFA sometime this summer.

Another participant commented that her Tribe has participated in the Low Income Household Water Assistance Program ("LIHWAP"). LIHWAP provides funds to assist low-income households with water and wastewater bills. LIHWAP grants are available to federally and state-recognized Indian Tribes and Tribal organizations that received FY 2021 Low Income Household Energy Assistance Program ("LIHEAP") grants. The participant commented that the LIHWAP will allow the Tribe provide direct payments for Tribal member's water bills. She noted that the program does not cover water infrastructure costs, but is still useful because so many Tribal members are behind on water bill payments. Anyone interested in the LIHWAP can find additional information [here](#).

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.

Mr. Walters commented that the National Congress of American Indians (“NCAI”) is holding their 2021 mid-year conference on June 20–24, 2021. NAIHC will be involved in that conference and will share NCAI updates after that. NAIHC is also working with HUD on a holding a larger housing summit. HUD and NAIHC are figuring out the details and timing, and will provide further information once it is available.

The NAIHC Legislative Committee meetings will continue to be held the first Thursday of each month (except that July will be on the second Thursday due to the July 4 holiday weekend). The next NAIHC Legislative Committee meetings will be held on July 8 and August 5, 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.