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MEMORANDUM

July 12, 2021

To: TRIBAL HOUSING CLIENTS

From: Ed Clay Goodman
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Re: *NAIHC Legislative Committee Meeting – July 2021; Other Updates*

On July 8, 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.

I. Congressional Updates

a. Presentation by Biden/Harris Administration Staff

Three Department of Housing and Urban Development (HUD) officials gave a presentation and answered questions about the Administration's proposed infrastructure legislation: Anne Brewer (Deputy Assistant Secretary for Public Engagement) (DAS); Peggy Bailey (Senior Advisor to the HUD Secretary); and Sarah Brundage (General Deputy Assistant Secretary for Congressional and Intergovernmental Relations). After an introduction from DAS Brewer, Ms. Bailey explained the Administration's "Build Back Better" plan, and in particular its infrastructure component. She emphasized that the Administration sees housing as a key element of infrastructure, and to that end has proposed \$2 billion for Indian Country housing as part of the infrastructure development proposal. She explained the Administration's proposed breakout of that funding as follows:

- \$650 million to be allocated as formula-based Indian Housing Block Grant (IHBG);
- \$350 million to be allocated as Indian Community Development Block Grant (ICDBG); and
- \$1 billion to be allocated via the IHBG competitive funding process.

Ms. Bailey noted that the ICDBG funds will be allocated based on a prioritization of projects that involve the development of infrastructure like roads and utilities. As for the IHBG competitive funding, HUD will prioritize projects that spur new construction and rehabilitation, that are climate-resilient, and that create new jobs. She also noted that HUD preferred the IHBG competitive funding because it "avoids negotiated rulemaking" and allows HUD more flexibility to establish the priorities. Several tribal and TDHE participants in the meeting expressed strong opposition to this approach and specifically to this rationale, noting that such reasoning is directly

contrary to the “self-determination” concept built into NAHASDA. Further, there was criticism that by allocating funding through the competitive grants, HUD was adding a layer of bureaucracy and cost that would not be needed if these funds were simply distributed through the IHBG formula. Peggy responded by saying that the competitive program would allow tribes who do not have enough funding through the IHBG formula allocation to apply for additional funding based on specific needs and projects, and that part of the goal here is to disburse money to smaller tribes who do not receive a lot of IHBG formula funding. The discussion became heated around this topic, until Mr. Walters re-directed it back to the strategy for getting this kind of additional funding passed through Congress.

Sarah Brundage addressed the strategy issue. She noted the Biden Administration was pursuing infrastructure funding on two parallel tracks: one was the bi-partisan bill that has received a lot of media coverage (which does not include housing funding); and a separate bill that includes Democratic priorities and would likely be passed with only Democratic votes (this is the Biden/Harris “Build Back Better” legislation). It is this second track that would include the housing funding discussed above. The Administration plans to work with its Congressional allies over July and August with the goal of developing and introducing specific legislation by September. DAS Brundage noted that she could not tell people how to lobby for the legislation, but noted that many tribes are located in key states with Senators whose support will be important for such legislation.

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

As we reported in a previous memo, 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 HUD component 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. 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 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.

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.

c. NAHASDA Reauthorization

Senate Bill 2264 has been introduced by a bi-partisan group of Senators (Murkowski [R-AK], Schatz [D-HI], Tester [D-MT], Hoeven [R-ND], Smith [D-NM], Cortez-Masto [D-NV], Lujan [D-NM] and Rounds [R-SD]). This bill has many of the elements that NAIHC and its membership have advocated for over the past several sessions of Congress.

The Senate Committee on Indian Affairs ("Committee on Indian Affairs"), Chairman Schatz, and Vice Chair Murkowski (R-AK) are trying to move the NAHASDA bill out of committee and onto the Senate floor for consideration. They are also looking for a vehicle – some other “must pass” bill – to which NAHASDA reauthorization could be attached. There is no House Companion bill yet. These Senators and NAIHC are working with House allies on the best approach for a House bill.

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 the annual defense authorization act that is required to be passed each year.

d. Other Indian Housing Legislation

Tribal HUD-VASH would provide assistance and supportive services to Native American veterans who are homeless or at risk of homelessness. A 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 sponsors on prior years’ versions of the Tribal HUD-VASH legislation. No standalone bill has yet been introduced, but the Tribal HUD-VASH program is included in S. 2264 (the “NAHASDA authorization bill”). However, if that effort slows down, then NAIHC will attempt to have it introduced as a standalone bill.

Another bill Congress is working on that would include funding for tribal housing is 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 for Congress to remove any restrictions keeping tribes from participating in various HUD programs such as the Section 8 Voucher Assistance. The prospects for this bill passing are not very high.

The Native American Rural Homeownership Improvement Act (“S. 2092”) has been introduced in the Senate. As with the NAHASDA reauthorization bill, it has a bi-partisan group of co-sponsors. If passed it would provide \$50 million from the USDA Single Family Home Loan

program to Native Community Development Financial Institutions (CDFIs) to provide home loans in tribal communities.

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 June 24, 2021, Treasury issued its most recently updated guidance on the ERA Program. For the first time, Treasury also released reporting guidelines for the use of these funds. We have covered the new guidance and reporting guidelines in a previous memo.

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 “obligate” 65% of their funding by September 30, 2021. This is a statutory deadline that Treasury has indicated it cannot change. In recent calls, however, Treasury has indicated that “obligating” funds does not mean “expending” the funds, and that Treasury will be flexible in reviewing the ways in which tribes/TDHEs have obligated such funds for expenditures.

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 they are planning to issue tribal-specific guidance, but have not done so yet.

Tribes or TDHEs who want to receive HAF funding must submit a Notice of Request for HAF funding. A copy of that form 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. Treasury is going to publish a template plan, but has not done so yet. 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.

III. Other Matters

NAIHC is also going to hold a virtual Legislative Conference on August 4, 2021, from Noon – 4 PM Eastern (9 AM to 1 PM Pacific). Agenda and registration information can be found here: <http://naihc.net/legislative-conference/>

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.

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.