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MEMORANDUM

January 7, 2022

TO: TRIBAL HOUSING CLIENTS

FROM:  Ed Clay Goodman and Cari L. Baermann
HOBBS, STRAUS, DEAN & WALKER, LLP

RE: *NAIHC Legislative Committee Meeting*

This memorandum provides a synthesis of information presented during the Native American Indian Housing Council (NAIHC) monthly Legislative Committee meeting held on January 6, 2022. NAIHC Executive Director Tony Walters presided over the Legislative Committee meeting.

I. Congressional Updates

A. *117th Congress Fiscal Year 2022 Appropriations*

The 117th Congress is now in its second session. Any bills that were not passed from 2021 will carry over into 2022. However, those bills must be passed this year to become law. The main focuses right now include the Fiscal Year (FY) 2022 appropriations, the Build Back Better (BBB) package, and voting rights.

Congress is continuing its work on the FY 2022 appropriations process, while the Biden Administration is also beginning its work on the FY 2023 Budget. FY 2021 ended on September 30, 2021, but rather than passing detailed, full-year FY 2022 appropriations bills, Congress passed a short-term continuing resolution (CR) to keep the federal government funded through December 3, 2021, at largely FY 2021 funding levels and conditions. On December 2, 2021, Congress passed another temporary spending bill (HR 6119) that will keep the federal agencies funded through February 18, 2022.

On November 15, 2021, President Biden signed the roughly \$1 trillion bipartisan infrastructure bill and five-year surface transportation reauthorization, the “Infrastructure Investment and Jobs Act” (“IIJA”, Pub. L. No. 117-58). The IIJA provides over \$11 billion for Native communities, including:

- \$3.5 billion for the Indian Health Service Sanitation Facilities Construction Program;
- \$3 billion for the US Department of Transportation Tribal Transportation Program;
- \$2.5 billion to address approved Indian water rights settlements; and

- \$2 billion for the National Telecommunications and Information Administration Tribal Broadband Connectivity Program.

The IJA also establishes an Office of Tribal Government Affairs in the U.S. Department of Transportation and an Assistant Secretary for Tribal Government Affairs, among other beneficial provisions and funding for tribes.

On November 19, 2021, the House passed a slimmed down (\$1.7 trillion, instead of \$3.5 trillion) budget reconciliation package, the BBB Act, which is a package of provisions to address childcare, health, education, and climate change. The original \$3.5 trillion package was proposed by the Administration, but was scaled back after extensive negotiations with two Senators: Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ). Neither of those Senators expressly agreed that they would sign off on the modified version of BBB, but the House pressed forward with its version to move the issue forward. The package, as currently drafted, contains significant resources for Indian Country, but less than the original \$3.5 trillion version.

Examples include:

- \$1 billion for Indian Housing programs:
 - \$277 million Indian Housing Block Grant (IHBG);
 - \$277 million IHBG competitive;
 - \$200 million Indian Community Development Block Grant (ICDBG);
 - \$200 million Native Hawaiian Housing Block Grant (NHHBG);
 - \$25 million Housing and Urban Development (HUD) admin; and
 - \$20 million training and technical assistance (T/TA) grants.
- \$200 million to carry out the tribal energy loan guarantee program;
- \$441 million for tribal climate resilience and adaptation programs;
- \$19.6 million for Bureau of Indian Affairs fish hatchery operations and maintenance programs;
- \$294 million for the provision of electricity to un-electrified tribal homes through renewable energy systems;
- \$945 million for the maintenance and improvement of Indian Health Service and tribal healthcare facilities;
- \$490 million for Indian Affairs public safety and justice programs; and
- \$715.4 million for the Bureau of Indian Affairs Road System and Tribal transportation facilities for road maintenance, planning, design, construction, and to address the deferred road maintenance backlog.

In order for this legislation to pass the Senate, it will need all 50 Democratic (and Democratic-allied) Senators to vote in favor of it. In late December, in an appearance on Fox News, Senator Manchin indicated that he “could not” support the BBB in its current form, despite the changes made to address his expressed concerns. The White House and the Democratic leadership expressed frustration with Senator Manchin. Subsequent news reports indicated that there may be an attempt to move forward with new negotiations with Senator Manchin after a “cooling off” period. One of the approaches discussed was to break out the bill

into smaller items and to move forward with those that have Senator Manchin's support (such as certain climate change provisions that provide support for the fossil fuel industry to convert to "cleaner" energy) and to drop those that he does not (an extension of the Child Income Tax Credit). We do not know at this time how the Indian Country provisions outlined above would fare in that kind of approach.

II. Update on Other Tribal Housing Bills

A. NAHASDA

The Senate Committee on Indian Affairs ("Committee on Indian Affairs") is still focusing on the reauthorization of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). The NAHASDA reauthorization bill (S. 2264) has nine (9) bipartisan co-sponsors. The co-sponsors are trying to move the NAHASDA reauthorization bill out of the Committee on Indian Affairs and onto the Senate floor for consideration. The next step is a vote by the Committee on Indian Affairs. The bill will then need to pass the full Senate. The bill sponsors are also attempting to attach the NAHASDA bill to some other "must-pass" legislation. At the end of 2021, the bill sponsors attempted to attach the NAHASDA bill to the National Defense Appropriations Act (NDAA). However, on Tuesday, December 9, the House passed its version of the NDAA without the NAHASDA reauthorization bill. NAIHC will continue to work towards reauthorization during 2022.

Both the House and Senate are working on versions of a NAHASDA reauthorization bill. We have reported on the provisions of those two bills in prior reports.

B. Tribal HUD-VASH

As we have reported in prior memos, there continues to be little progress on the Tribal HUD-VASH legislation, although the Tribal HUD-VASH language is included in both the Senate and House NAHASDA reauthorization bills, as well as in standalone bills. 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 Tribal HUD-VASH program. The funding structure and source of funding for a Tribal HUD-VASH is up in the air. Tribal advocates want to ensure that the money does not come out of some other already-existing funding for tribal housing.

C. Native American Rural Homeownership Improvement Act

The Native American Rural Homeownership Improvement Act (S. 2092) is a bipartisan bill being co-sponsored by six (6) Senators: Tina Smith (D-MN), Mike Rounds (R-SD), John Tester (D-MT), John Thune (R-SD), Kevin Cramer (R-ND), and Brian Schatz (D-HI). It would provide \$50 million from the USDA single-family home loan program to Native Community Development Financial Institutions to provide home loans in tribal communities. It is based on the success of the USDA 502 single-family loan pilot program in South Dakota and would

expand that program to be accessible to tribes across the country. The South Dakota tribes have been working on this pilot and have found the program to be successful. The South Dakota tribes received \$2 million under this initial pilot program. If passed, the funding would increase the amount of loan funding for tribal communities. It would further bolster local tribal Community Development Financial Institutions (CDFIs). Additionally, Congressman Dusty Johnson (R-SD) has agreed to introduce a House companion bill, which indicates support in both Congressional chambers for the program. NAIHC continues to work with bill sponsors to advocate that this bill is passed.

On January 5, 2022 the Senate Committee on Banking, Housing, and Urban Affairs Housing, held a hearing entitled “Exploring How Community Development Financial Institutions Support Underserved Communities”. Lakota Vogel, Executive Director, Four Bands Community Fund, of Eagle Butte, South Dakota, gave testimony on the success of and need for further funding for Native CDFIs. The full hearing recording can be found [here](#).

Another bill that could benefit tribal housing is the “Tribal Trust Land Homeownership Act”. Congress is still drafting the bill, so the exact details have not been released. However, the bill would address issues with the Bureau of Indian Affairs’ (BIA) processing title status reports for Section 184, 184A, and other lending programs. The bill would create deadlines for the BIA, which should speed up the process and decrease delays in approval of the title status reports.

III. HUD Programs

A. HUD Grants

Mr. Walters reported that tribal housing has received a little over \$4 billion in funding in the past two years:

- **\$1.633 Billion through regular annual appropriations**
 - \$1.293B in Indian Housing Block Grant (IHBG)
 - \$200M in IHBG competitive grants
 - \$140M in Indian Community Development Block Grant (ICDBG)
- **\$650 Million in supplemental IHBG funds**
 - \$200M from the CARES Act
 - \$450M from the American Rescue Plan Act (ARP)
- **\$380 Million in supplemental ICDBG funds**
 - \$100 million from CARES
 - \$280 million in ARP funds
- **\$898M from Emergency Rental Assistance Program (ERAP)**
- **\$450M from the Homeowner Assistance Fund (HAF)**

NAIHC and other tribal housing advocates continue to advocate that additional funding be provided to tribal housing, particularly in order to help tribes address issues caused by the COVID-19 pandemic.

HUD is on track to award and allocate the ICDBG FY 21 and IHBG Competitive FY 21 grants. The ICDBG FY 21 grant (\$76 million) application deadline was October 25, 2021. The IHBG Competitive FY 21 grant (\$95 million) deadline was January 4, 2022 (HUD extended the original deadline of December 1, 2021). HUD is also processing T/TA. Tribes and Tribally Designated Housing Entities (TDHEs) can also contact NAIHC for additional training, as NAIHC is continuing to try to help connect tribes with TTA.

HUD has also worked to expand the Tribal HUD-VASH funding to tribes. The Notice of Funding Opportunity (NOFO) for the Tribal HUD-VASH closes on **January 22, 2022**. Webinars were held in early December, 2021, and are now available on the HUD website located [here](#).

HUD will be holding a virtual Tribal Continuum of Care Consultation on January 11, 2022 at 3:00 P.M. EDT. The call will provide information and solicit feedback from Indian Tribes regarding the FY 2022 CoC Program Competition and registration process as well as the following funding opportunities: Youth Homelessness Demonstration Program (YHDP), and the Unsheltered Homelessness and Rural Homelessness NOFO.

B. HUD Committees and Plans

On November 15, 2021, the HUD Office of Assistant Secretary for Public and Indian Housing published a notice of HUD's intent to form a Tribal Intergovernmental Advisory Committee (TIAC). Notice of Intent to Establish a Tribal Intergovernmental Advisory Committee; Request for Comments on Committee Structure, 86 Fed. Reg. 63,051 (Nov. 15, 2021). The full Notice can be found [here](#). HUD is now soliciting comments and recommendations regarding the establishment and structure of the TIAC. The deadline to submit comments on the proposed TIAC is **January 14, 2022**.

The purpose of the TIAC is to enhance the government-to-government relationships, communications, and mutual cooperation between HUD and tribes. The Notice states that the TIAC will be comprised of a diverse group of fifteen elected tribal leaders from small, medium, and larger federally recognized Tribes across the country—two for each of the six Office of Native American Programs (ONAP) regions and three at-large members. HUD is proposing that “The TIAC is intended to further communications between HUD and federally recognized Tribes on HUD programs, make recommendations to HUD regarding current program regulations, provide advice in the development of HUD’s American Indian and Alaska Native (AIAN) housing priorities, and encourage peer learning and capacity building among Tribes and non-tribal entities.” The proposed TIAC is a result of HUD’s Tribal Government-to-Government Consultation Policy, which recognizes the right of Indian Tribes to self-governance and supports tribal sovereignty and self-determination. Comments can be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov.

On **January 19, 2022**, HUD's Office of Housing Counseling is convening a virtual meeting of the Housing Counseling Federal Advisory Committee (HCFAC) which will be open to the public. During the meeting, the HCFAC will discuss issues facing the housing counseling industry. This one-day virtual meeting requires advance registration to participate. To register, individual must send an email requesting registration to HCFACCommittee@ajantaconsulting.com. Additional information can be found [here](#).

HUD is currently inviting feedback on its draft FY 2022-2026 Strategic Plan focus areas. The deadline for comments is **January 28, 2022**. Anyone wishing to send in comments may do so by emailing SPPD@HUD.gov. Additional information can be found [here](#).

IV. Treasury Programs

A. *Emergency Rental Assistance Program*

The Consolidated Appropriations Act, 2021 (the "Act") (Pub. L. No. 116-260, Division N § 501, Dec. 27, 2020) included \$25 billion for the Emergency Rental Assistance (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. One of the provisions of the ERA Program legislation is that Treasury is authorized to recapture "excess" funds and reallocate those funds to recipients who have already expended 65% or more of their ERA Program funding by September 30, 2021. The statute does not define "excess" funds, leaving such definition to Treasury. In guidance that Treasury issued on October 4, 2021, Treasury stated that it will not recapture funds from Indian Tribes or TDHEs prior to April 2022 (in order to provide for an opportunity to consult with Tribes). Treasury has not yet indicated whether it will recapture any funds from Tribes. However, if a recapture of tribal funds does occur, it will not happen until at least the final reallocation based on data obtained from the March 30, 2022 reporting period.

Tribes and TDHEs that have obligated 65% of their ERA Program funds can apply right now to receive recaptured state funds. The request form is available on the Treasury website, located [here](#). To request reallocated funds, the grantee (1) must certify that it obligated 65% of its ERA Program funds (as required by the Act); and (2) must demonstrate need. Need will be determined based on the grantee's four-month projection of their need for reallocated funds and what they reasonably anticipate being able to spend in that four-month period. Treasury will test the reasonableness of that projection based on past performance by that grantee. Several tribes reported having received reallocated funds from Treasury.

B. *Treasury's Homeowner Assistance Fund*

As we have reported in prior memos, the American Rescue Plan Act (ARPA) provides approximately \$498 million in funding to tribes for the Homeowner Assistance Fund (HAF) Program. The HAF Program provides mortgage assistance to homeowners to prevent the foreclosure or post-foreclosure eviction of a homeowner due to the COVID-19 pandemic.

Funding for the HAF Program is allocated through the Treasury for distribution. Allocations are based on the IHBG formula for FY 2021. Tribes or TDHEs that wished to receive HAF funding were required to submit a Notice of Request for HAF funding by December 15, 2021.

Treasury will make initial payments to tribes or TDHEs in the amount of ten percent (10%) of the allocated HAF Program funds. In order to receive the remaining 90 percent (90%) of HAF Program funds, the Tribe or TDHE must submit a plan for its use of the HAF funds. Treasury recently published the templates for HAF Program participants to use in developing their HAF plans, which can be found [here](#). Tribes must go to a Treasury portal to submit the completed plan and claim their allocation of HAF Program funds. The portal website link can be found in the portal instruction manual issued by Treasury. NAIHC held a HAF training to help tribes submit their HAF plans, which was recorded and is available on the NAIHC website. Most tribes have not yet received Treasury approval of their plan, but Treasury is slowly processing the plans.

One participant asked whether there are any templates for HAF plans put together by Tribes (instead of the one provided by Treasury). The participant noted that a HAF plan template would be useful for those tribes who are still working on submitting their HAF plan. Mr. Walters responded that he will look into how to provide tribally-created HAF plans.

V. Other Matters

A. NAIHC Legislative Conference

The next NAIHC event will be the annual NAIHC Legislative Conference, currently scheduled to be held in person on February 14–16, 2022 at the Hilton Capitol Hill in Washington, D.C. Registration for the Legislative Conference is currently open. However, NAIHC is mindful of COVID-19 safety issues and continues to monitor whether it will be safe to hold the Conference in-person. If it is held in-person, NAIHC can help tribes schedule any meetings with their Congressional representatives. Mr. Walters noted that Congress currently requires advance notice of any in-person meetings, and requires proof of vaccination. NAIHC is also coordinating with the National Congress of American Indians (NCAI), which is holding its Winter Session the week of February 14, 2022, as well.

B. NAIHC Legislative Committee Meetings

The NAIHC Legislative Committee meetings will continue to be held the first Thursday of each month on a videoconference platform. 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. 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.

C. New Additional Monthly Forums

NAIHC will continue holding additional monthly forums to focus on more in-depth conversations, which will be held on the second Wednesday of each month. The next monthly forum will be held on January 12, 2022, and will cover HUD's Housing Counseling. The forums will cover a rotating discussion on a single topic. Currently, NAIHC is proposing the three following topics: (1) Treasury programs; (2) HUD Continuum of Care; and (3) HUD Housing Counseling. NAIHC welcomes any other topics individuals would like covered during these monthly forums. NAIHC is also asking for volunteers to help lead discussions during the forums.

D. Other Updates

NAIHC will continue to provide virtual training and technical assistance. NAIHC sends out a Native housing newsletter every two weeks. Any tribe who does not currently receive the newsletter can go to the NAIHC website to sign up.

Conclusion

If you have any questions, please do not hesitate to contact Ed Clay Goodman at EGoodman@hobbsstrauss.com or Cari Baermann at CBaermann@hobbsstrauss.com or by phone at (503) 242-1745.