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MEMORANDUM

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TO: TRIBAL HOUSING CLIENTS

FROM:  Edmund Clay Goodman and Cari L. Baermann
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RE: ***NAIHC Monthly Forum—Housing Counseling***

This memorandum provides a synthesis of information presented during a Native American Indian Housing Council (NAIHC) Monthly Forum on the U.S. Department of Housing and Urban Development (HUD) Housing Counseling Program.

I. Housing Counseling

a. HUD's 2021 Tribal Consultations

HUD's Housing Counseling Program is authorized under Section 106 of the Housing and Urban Development Act of 1968 (12 USC 1701x). The Housing Counseling Program is designed to provide individuals and families with the knowledge they need to obtain, sustain, and improve their housing through HUD-approved housing counseling agencies and HUD certified counselors. HUD's Office of Housing Counseling (OHC) is responsible for the administration of all regulations, requirements, standards, and performance measures under the programs and laws administered by HUD that relate to housing counseling (43 U.S.C. 3533(g)(3)). The Dodd Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010)) (Dodd-Frank Act) required HUD to standardize housing counseling activities conducted with HUD funding and specifically listed NAHASDA as relevant funding to be regulated under the Housing Counseling Program.

During 2021, HUD conducted two tribal consultation sessions to obtain feedback on implementation of a housing counseling regulatory amendment to the Housing and Urban Development Act of 1968 as it applies to the Indian Housing Block Grant (IHBG) and the Indian Community Development Block Grant (ICDBG) programs. On December 14, 2016, HUD published a final rule addressing certification requirements for housing counseling. The rule implements the amendment by requiring that within 36 months of the availability of a certification examination, housing counseling (as required by or provided in connection with HUD programs) could only be provided by HUD-certified housing counselors working for a participating agency. In future rulemaking, HUD will codify how the certification requirements are applicable to the

IHBG and ICDBG programs, and the eligibility requirements for tribes to participate in the HUD Housing Counseling Program.

The overall theme of the tribal feedback that HUD received was that the HUD housing counseling rules do not fit tribal housing programs, and that forcing tribes to comply will likely reduce housing counseling service in tribal areas. Further, prior discussions with HUD have indicated that tribes are currently not eligible to be certified for providing housing counseling. Tribes and TDHEs are still the only entities likely to carry out housing counseling in tribal communities and they are the only entities that truly understand tribal-specific issues. Mr. Walters remarked that NAIHC is therefore recommending that tribal housing counseling be considered separate from other housing counseling requirements. NAIHC is recommending that HUD implement the following housing counseling amendments:

- To include tribes as eligible housing counseling agencies;
- To respect the history and experience of existing tribal housing programs as satisfying the housing counseling agency eligibility requirements; and
- To recognize tribal community differences in individual housing counselor certifications.

Mr. Walters remarked that he will be participating in the HUD Housing Counseling Federal Advisory Committee and will continue to work with the OHC to better understand the timing of the rulemaking and any next steps for tribal consultation from HUD's perspective. Further, NAIHC will continue to offer the Pathways Train-the-Trainer Program and other materials to tribal programs as guidance for tribal housing programs.

b. Tribal Housing Counseling Services

Participants then provided comments on their own experiences and challenges in providing housing counseling services.

One participant asked whether the NAIHC Pathways Home homeownership program is able to satisfy the housing counselor certification requirement. Mr. Walters responded that HUD has indicated that it might consider the Pathways Home as a qualified housing counseling program.

Another participant commented that the current Housing Counseling Program requirements do not provide the flexibility necessary to providing housing counseling in tribal areas. She noted that it is also difficult for any entity to become a HUD-certified housing counselor. Further, the only housing counselors currently available in the tribe's area are often not responsive to tribe-specific needs or do not have any tribal expertise.

Another participant remarked that it is not possible for the existing HUD housing counselor certification requirements to be changed enough to adequately remove the burden on tribes. The participant noted that one option would be to persuade HUD to create a separate housing counseling program for tribes, instead of trying to conform the existing housing counseling requirements to tribal housing.

A participant asked why HUD is even trying to apply their existing housing counseling requirements on tribal housing. Another participant responded the application may be in response to the HUD Section 184 Indian Home Loan Guarantee Program requirement that it be administered in accordance with the Housing Counseling Program.

Another participant questioned what tribes would do with Housing Counseling Program funding. Mr. Walters responded that many tribes may consider using that funding to cover the costs of the housing counseling that they are already provided. That funding would allow tribes to receive payments for each housing counseling service that they provide. It could therefore be a significant source of funding for tribes.

II. Future 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 February 9, 2022. The forums will cover a rotating discussion on a single topic. Currently, forums will cover 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.

Conclusion

We will continue to update you on the Housing Counseling Program as it applies to tribes. If you have any questions, please contact Ed Clay Goodman (egoodman@hobbsstrauss.com or 503-242-1745).