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MEMORANDUM

June 9, 2022

To: TRIBAL HOUSING CLIENTS

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

Re: ***NAIHC Legislative Committee; Proposed Rulemaking for Community Investment Act***

This memorandum provides a synthesis of information presented during the National American Indian Housing Council (NAIHC) Legislative Committee meeting held on June 9, 2022, and the proposed rulemaking for the Community Investment Act. NAIHC Executive Director Tony Walters presided over the Legislative Committee meeting.

I. NAIHC Legislative Committee Meeting

a. Legislative Update

NAHASDA reauthorization efforts are continuing. There are two version that have been introduced: S. 2264 and H.R. 5195. Key provisions of the Senate version of the bill (S. 2264) include:

- Authorizing Native American Housing Assistance and Self-Determination Reauthorization Act (NAHASDA) programs through 2032;
- Creating an Assistant Secretary for Indian Housing at U.S. Department of Housing and Urban development (HUD);
- Re-establishing a Drug Elimination Program for tribal communities;
- Consolidating the environmental review requirements for housing;
- Recognizing tribal sovereignty to govern maximum rent requirements;
- Allowing tribal housing programs to access the Indian Health Service (IHS) sanitation funding;
- Making tribes eligible for HUD Housing Counseling grants;
- Including HUD-Veterans Affairs Supportive Housing (HUD-VASH) provisions; and
- Leveraging/using NAHASDA funding as a match for other federal grants.

The Senate bill, S. 2264, has ten, bipartisan co-sponsors. It has passed out of the Senate Committee on Indian Affairs (SCIA), and the next step is a vote by the full Senate. NAIHC is currently working to identify another bill that is a must-pass for the Senate to which this NAHASDA bill can be added so that it passes the Senate. When and if this bill passes the Senate, it would then have to pass the House. There are some issues in the House with this S. 2264 bill; there are some leaders in the House who want to include their provisions. For example, the House leadership does not support the change to the 30% rule for rents and homebuyer payments contained in S. 2264. Further, the House leadership wants to add language that targets the five tribes (“Five Tribes”) in Oklahoma (Cherokee Nation, Seminole Nation, Muscogee (Creek) Nation, Chickasaw Nation, and Choctaw Nation), withholding NAHASDA funding from the Five Tribes unless they provide housing assistance to Freedman descendants.

H.R. 5195 has one sponsor, Financial Services Committee Chair Maxine Waters (D-CA). It has passed out of Committee but will be need to be added to the House calendar. H.R. 5195 includes the following key provisions:

- Creating an Assistant Secretary for Indian Housing at HUD;
- Total Development Cost (TDC) allowances for energy efficiency upgrades;
- Five percent (5%) tribal set-aside for United States Department of Agriculture (USDA) programs;
- Making tribes eligible for HUD Housing Counseling grants;
- HUD-VASH provisions;
- Exemption from the Flood Insurance Program; and
- Providing for tribal court jurisdiction over Section 184 loan foreclosures.

However, H.R. 5195 also contains some concerning provisions that NAIHC does not support. First, it has a cap on annual Indian Housing Block Grant Program (IHBG) appropriations at \$680 million per year. That amount is lower than what the Biden Administration included in its budget proposal, and is of general concern because it could set what becomes perceived as a hard cap in subsequent appropriations cycles. Second, as discussed above, H.R. 5195 targets the Five Tribes, withholding NAHASDA funding unless they provide housing assistance to Freedmen descendants.

Native American Rural Homeownership Improvement Act (NARHI Act). The NARHI Act has eight bipartisan cosponsors in the Senate (S. 2092) and three in the House (H.R. 6331). The NARHI Act 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. It would also expand a demonstration project currently operating only in South Dakota. To prioritize lending on trust land, it would also waive the 20% match requirement for loans on tribal land. In addition, it authorizes an operating grant for Native CDFIs who relend under this program and appropriates \$1 million annually for technical assistance to Native CDFIs.

The bills were introduced in June 2021, and there were subcommittee hearings in July 2021 and February 2022. NAIHC continues to work with bill sponsors to advocate that this bill is passed.

Tribal Trust Land Homeownership Act, S. 3381, would establish timelines for the Realty/Land Title process at the Bureau of Indian Affairs (BIA), and would create a Realty Ombudsman in BIA to hold BIA accountable for meeting these timelines. The bill has bipartisan support. There was a hearing in February 2022, and the bill was voted out of the SCIA in May, 2022.

b. Budget and Appropriations

In March 2022, Congress passed, and President Biden signed a \$1.5 trillion omnibus appropriations bill for FY 2022. This bill was the first major increase in IHBG funding in years. The IHBG formula was increased to \$772 million (almost 20% increase), and the IHBG competitive grant was increased to \$150 million. The bill largely mirrored the Biden Administration budget request (moving \$50 million from the IHBG competitive grant to the IHBG formula grant). Still, the appropriations have not kept up with inflation from the initial NAHASDA appropriations in 1996, meaning that while it does provide more money for tribal housing, that money has less purchasing power. It is also a smaller percentage overall of the HUD budget than in years past.

The Biden Administration released its FY 2023 budget in March 2022, and the numbers are nearly identical to the FY 2022 IHBG budget. The budget requests \$1 billion for tribal housing, including \$772 million for IHBG grants, \$150 million for IHBG Competitive grants, \$70 million for Indian Community Development Block Grant (ICDBG) Program grants, \$7 million for training and technical assistance (T/TA), and \$1 million for Title VI loan guarantees. The budget request also contains some additional provisions: a waiver of various housing nondiscrimination laws for tribal continuum of care projects; inclusion of the USDA 502 Pilot; and \$14 million in funding for the BIA Housing Improvement Program (HIP).

NAIHC's recommendations are higher: \$1.062 billion for the IHBG formula grant; \$100 million for ICDBG Program; \$7 million for T/TA; \$1 million Title VI loan guarantees; and \$10 million for HUD Section 184 loan guarantees. Other requests from NAIHC include: more funding and relending authority for the U.S. Department of Veterans Affairs (VA) Native American Direct Loan Program; asking for a USDA tribal set aside; and \$23 million for BIA HIP.

As we have reported in prior memos, on April 1, 2022, HUD published a notice alerting Tribal Leaders to the official establishment of the Tribal Intergovernmental Advisory Committee. In association, HUD published a note in the Federal Register outline the structure and purpose the committee, and the procedures for nominating members. Nominations for the committee were due **May 31, 2022**. Membership must be tribal leadership, two from each HUD Office of Native American Program (ONAP) region plus three at-large members. The terms will be for two years, and staggered (half of the initial appointees will serve three-year terms). The next step is for HUD to announce who has been selected from among the nominees.

c. *HUD ONAP Regional Update*

1. HUD Grants

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

On May 26, HUD released a list of tribal recipients of the IHBG and FY21 ICDBG funding. HUD awarded \$95 million in IHBG funding to 24 tribes and \$52 million in ICDBG funding to 59 tribes. The complete list of IHBG recipients can be found [here](#). The complete list of ICDBG recipients can be found [here](#). The FY 2021 IHBG competitive grants awarded \$95 million to 24 tribes. Awards were sent out on May 26, 2022.

The FY 2022 IHBG formula grant final amounts have been posted and grantees should be receiving grant agreements soon. The FY 2022 IHBG competitive grant provides up to \$5 million per grant. This year, there will be \$150 million available nationally, so tribes and TDHEs are encouraged to apply for this funding, even if they already have an IHBG grant. The FY 2022 ICDBG normal funding is available and tribes and TDHEs are encouraged to apply. The FY 2023 IHBG grant estimates will be posted June 1st, 2022.

The FY 2021 ICDBG-American Rescue Plan (ARP) grant has been fully awarded, with around \$280 million being awarded out to tribal housing programs. The IHBG-ARP grant provided \$450 million through the American Rescue Plan. HUD Office of Native American Programs (ONAP) required tribes to submit Abbreviated Indian Housing Plans (AIHP) to HUD to access supplemental funding. As of May 6, 2022, over 330 AIHPs were submitted, consisting of \$20 million of IHBG-ARP funds. Tribes and TDHEs have until **July 5, 2022** to submit the AIHPs. The American Rescue Plan implementing statute allows HUD to move unused IHBG-ARP funds to the ICDBG-ARP program. Approximately \$20 million remains and HUD has indicated it will move these funds to the ICDBG-ARP grant program after July 5, 2022.

One participant asked whether a tribe's application for the regular ICDBG grant can be rolled into the ICDBG-ARP program. Mr. Walters responded that it likely cannot, but that tribes should contact their area ONAP to ask details about this. Another participant asked whether unfunded money will be allocated out to those tribes that did accept ARP money. Mr. Walters responded that if there is unclaimed IHBG-ARP money, that money does not necessary go to other tribes. Instead it is moved to the ICDBG-ARP grant program.

The Youth Homelessness Demonstration Program (YHDP) is another program that may benefit tribal communities. The Notice of Funding Opportunity (NOFO) for the FY 2021 YHDP is now available [here](#). YHDP is an initiative designed to address systemic responses to youth homelessness and significantly reduce the number of youths experiencing homelessness. Through this NOFO, HUD will award approximately \$72 million in up to 25 participating communities, with a priority for communities with substantial rural populations in up to eight locations. HUD strongly encourages all communities to consider applying. Tribes are eligible to receive funding

(but there is no tribe-specific funding). The deadline to apply is **June 28, 2022**. Applications must be submitted through [grants.gov](https://www.grants.gov). Additional information can be found [here](#).

d. Treasury Programs

2. Emergency Rental Assistance Program

As we have reported in prior memos, Tribes received an \$800 million set-aside from the Emergency Rental Assistance (ERA) Program fund to assist eligible households who are facing eviction due to unpaid rents and utilities, or the inability to pay prospective rents and utilities. The deadline to use the ERA Program funds is September 30, 2022. Under the Consolidated Appropriations Act, 2021, Treasury is required to identify “excess funds” for reallocation from amounts Grantees have “not obligated” from their initial ERA allocations. Specifically, the statute provides that beginning on September 30, 2021, Treasury must recapture excess funds, as determined by the Secretary, not obligated by a grantee for eligible ERA purposes. Treasury must reallocate those funds to Grantees that, at the time of the reallocation, have obligated at least 65% of their initial ERA allocation.

On June 1, 2022, Treasury released an Addendum to Reallocation Guidance for Tribal Governments (“Reallocation Guidance”), which is attached to this memorandum. Under the Reallocation Guidance, each Tribal government will be allowed to retain funds from its initial ERA award that are unobligated as of June 30, 2022, in an amount equal to the largest amount of ERA funds the Tribe has spent on assistance in any quarter. Any unobligated funds beyond that amount will be considered excess funds and subject to recapture. Additionally, Treasury will not recapture funds that a Grantee has obligated. Treasury will consider funds to be obligated if they meet any of the following conditions:

- The funds have actually been spent providing financial assistance or housing stability services for eligible households;
- The funds are needed to pay for assistance promised in a commitment letter issued to induce a landlord to enter a rental agreement with an eligible household under Treasury’s ERA FAQ 35; or
- Subject to certain conditions described in the Reallocation Guidance concerning subrecipients, the Grantee has entered into a binding agreement or funding commitment requiring the Grantee to disburse the funds to a third party for eligible ERA purposes (a “Contractual Obligation”).

The Reallocation Guidance states that Treasury will reallocate ERA funds for Tribal governments after the Q2 2022 reporting period ending on June 30, 2022. Tribes must submit reporting for Q2 by **July 15, 2022**. Treasury has indicated that where a Tribe or TDHE has received reallocated funds, those funds may qualify for a 90-day extension of the deadline, permitting their use until December 29, 2022. Any funds from the initial ERA disbursement (excluding reallocated funds) that are unused on September 30, 2022 must be returned to Treasury at that time. Tribes have until June 10, 2022 to submit requests to receive reallocations from non-tribal sources.

On June 8, 2022, Treasury emailed a Dear Tribal Leader Letter (DTLL).¹ In the DTLL, Treasury stated that tribes and TDHEs cannot provide prospective rent or utility assistance or cover costs for other expenses related to housing for any period beyond September 30, 2022. Specifically, Treasury stated that:

[F]inancial assistance payments may cover *only* rent, utility and home energy expenses, rental or utility and home energy costs arrears, or other expenses related to housing arising before that date—an ERA1 grantee *may not provide prospective rental or utility assistance, or cover costs for other expenses related to housing for any period beyond September 30, 2022*. Likewise, ERA1 grantees may not cover costs for housing stability services for any period beyond September 30, 2022.

One participant on the NAIHC call asked why Treasury is not allowing tribes to obligate ERA Program funding beyond the September 30, 2022 deadline, such as through Contractual Obligations. Treasury has not yet provided an answer to this. However, the American Rescue Plan Act (ARPA) provided an extension from December 31, 2021 to September 30, 2022 of the final date through which ERA Program funds will be available. Based on the DTLL, it appears that Treasury views the September 30, 2022 date as the deadline by which funds must be *expended*, not *obligated*, despite language in earlier guidance suggesting the opposite.

On the Treasury ERA Program call held on June 1, 2022, participants asked how Treasury will calculate the amounts to be recaptured from tribes and TDHEs. Mr. Walters noted on the NAIHC call that Treasury has not yet provided that answer, but NAIHC will continue to ask about that question.

Another participant asked whether it is possible to extend the June 10, 2022 reallocation request deadline or the July 15, 2022 reporting deadline because of the substantial issues that grantees are having with submitting reporting and reallocation requests through the Treasury portal. Mr. Walters said that Treasury is looking into that.

3. Treasury's Homeowner Assistance Fund

The 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 Tribally Designated Housing Entities (TDHEs) that wished to receive HAF funding were required to submit a Notice of Request for HAF funding by December 15, 2021. At least half of the tribes have now received Treasury approval of their HAF plans. As of May 13,

¹ The DTLL has been attached for your convenience.

2022, 71 tribes have received HAF plan approval and funds. The pace of Treasury's review of the plans has picked up recently after many delays.

NAIHC has training funds available for both the ERA Program and HAF Program. The application form for these training funds is available by contacting training@naihc.net. Training is also available on NAIHC's [website](#).

e. Other Matters

1. NAIHC Legislative Conference and Legislative Committee Meetings

Due to concerns of COVID-19 safety issues, the annual NAIHC Legislative Conference was postponed to September 19–21, 2022. It will be held in person in Washington, DC. NAIHC will help set up meetings between tribes and members of Congress.

The NAIHC Legislative Committee meetings will continue to be held the first Thursday of each month on a videoconference platform. The next meetings will be held on July 7 and August 4, 2022. 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. Participants can reach out to NAIHC staff with any questions or comments by sending an email to Twalters@NAIHC.net.

2. Additional Monthly Forums and Other Updates

NAIHC will continue to hold additional monthly forums to focus on more in-depth conversations, which will be held on the second Wednesday of each month. The forums will cover a rotating discussion on a single topic. Currently, NAIHC is holding forums the three following topics: (1) Treasury programs; (2) HUD Continuum of Care; and (3) HUD Housing Counseling. The next monthly forums will be held on July 13 and August 10, 2022. 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.

NAIHC will continue to provide virtual and in-person 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.

II. Community Reinvestment Act

The goal of the Community Reinvestment Act (CRA) is to encourage banks to invest in low-income communities to develop affordable housing in low income communities. On May 5, 2022, the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) issued a joint notice of proposed rulemaking to amend their regulations implementing the CRA. The proposed rulemaking would update how CRA activities qualify for consideration, where CRA

activities are considered, and how CRA activities are evaluated. The deadline for comments on the proposed regulations is **August 5, 2022**.

The rulemaking proposes creating a definition for qualifying community development activities targeted to and conducted in Native Land Areas to include:

- Revitalization activities in Native Land Areas;
- Essential community facilities in Native Land Areas;
- Essential community infrastructure in Native Land Areas; and
- Disaster preparedness and climate resiliency activities in Native Land Areas.

The rulemaking further proposes to more broadly define “Native Land Areas” to include the following geographic areas: Indian country, land held in trust by the United States for Native Americans, state American Indian reservations, Alaska Native villages, Hawaiian Home Lands, Alaska Native Village Statistical Areas, Oklahoma Tribal Statistical Areas, Tribal Designated Statistical Areas, American Indian Joint-Use Areas, and state-designated Tribal Statistical Areas.

Conclusion

If you have any questions about this memorandum, please contact Ed Clay Goodman (egoodman@hobbsstrauss.com) or Cari Baermann (cbaermann@hobbsstrauss.com), or by phone at 503-242-1745.