



MEMORANDUM

July 8, 2022

To: TRIBAL HOUSING CLIENTS

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

Re: ***NAIHC Legislative Committee Meeting; Other Housing Updates***

This memorandum provides a synthesis of information presented during the Native American Indian Housing Council (NAIHC) Legislative Committee meeting held on July 7, 2022, as well as updates on other tribal housing matters. 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. 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 and will be creating a template letter for tribal housing programs to send to their Members of

Congress. The House Committee on Agriculture also recommended that appropriations include a set-aside for NAHASDA. On Thursday, June 23, 2022, the Native CDFI Network hosted an action-focused webinar regarding the NARHI Act with examples of how it could strengthen the USDA Section 502 Home Loan Program. The full webinar can be viewed [here](#).

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.

Additionally, Senator Mike Rounds (R-SD) plans to introduce a bill involving the U.S. Department of Veterans Affairs (VA) Native American Direct Loan (NADL) program in the Senate next week. Last year, Senator Rounds requested a study (#GAO-22-104627) by the U.S. Government Accountability Office (GAO) on the effectiveness of the NADL program, which can be found [here](#). The NADL program allows eligible Native American Veterans to buy, build, or improve a home on federal trust land. The NADL may also be used to refinance an existing loan to reduce the interest rate. Interested tribes and tribal members can learn from NADL specialists or a NADL recipient to see how to qualify and apply. The NADL would also provide funding for Native CDFIs to do more outreach for the program to increase veteran participation. The Senate Committee on Veterans Affairs will be holding a hearing July 13, 2022 to consider the new bill. One of the participants on the call recommended that tribes and TDHEs reach out to their Congress Members to encourage support for the bill, particularly Senator Patty Murray (D-WA) and Senator Jon Tester (D-MT).

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 VA NADL Program; asking for a USDA tribal set aside; and \$23 million for the BIA HIP.

On June 30, 2022, the House Appropriations Committee approved the draft fiscal year (FY) 2023 Transportation, Housing and Urban Development, and Related Agencies (THUD) Appropriations Subcommittee bill. The bill proposes \$62.7 billion for HUD's affordable housing, homelessness, and community development programs, which is a \$9 billion (or 17%) increase over FY22-enacted levels.

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 (TIAC). In association, HUD published a note in the Federal Register outlining the structure and purpose the TIAC, and the procedures for nominating members. 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). Nominations for the committee were originally due May 31, 2022. However, HUD has reopened the request for nominations. Previously submitted nominations do not need to be re-submitted. Nominations are now due by **July 28, 2022**, which can be submitted [here](#). The next step will be 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 was posted June 1, 2022.

The FY 2021 ICDBG-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 (ARP). HUD 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 had 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.

The HUD Continuum of Care (CoC) Program is designed to empower and engage with communities to end homelessness HUD Continuum of Care. Through a special Notice of Funding Opportunity (“Special NOFO”) under the CoC Program, HUD recently released resources to address unsheltered homelessness and homeless encampments, including funds set aside specifically to address homelessness in rural communities. The funding under the Special NOFO is intended to enhance communities’ capacity to effectively address unsheltered homelessness by connecting vulnerable individuals and families to housing, healthcare, and supportive services. CoCs will have the opportunity to submit projects for two funding opportunities through this Special NOFO: (1) Unsheltered Homelessness Set Aside and (2) Rural Set Aside. Applications for the Special NOFO are due to HUD on October 20, 2022. Additional information and the Special NOFO can be found [here](#).

d. Treasury Programs

1. 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 had until June 24, 2022 to submit requests to receive reallocations from non-tribal sources. NAIHC is advocating to Congress that the deadline be extended beyond September 30, 2022 for tribes.

On January 19, 2021, Treasury published an initial set of Frequently Asked Questions (FAQs) to serve as guidance for the ERA Program. It has updated them several times, the most recent being on July 6, 2022. The updated FAQs are attached to this memorandum. Below is a summary of the main points of the updated FAQs.

- **Eligibility to receive ERA Program Assistance.** A tribe or TDHE may only provide ERA Program financial assistance and housing stability services to eligible households. The updated FAQs state that if a household will only receive housing stability services and will not receive any financial assistance, tribes and TDHEs are encouraged to rely on the household's self-attestations for purposes of confirming eligibility. If the household's self-attestation expressly addresses all eligibility requirements, the tribe or TDHE is not required to collect additional income documentation, past due notices, or other eligibility-verification documents.
- **Promoting access to assistance for all eligible households.** In accordance with Title VI of the Civil Rights Act of 1964, ERA grantees must ensure they provide meaningful access to their limited-English-proficiency (LEP) applicants and beneficiaries of their federally assisted programs, services, and activities. Additional information regarding reasonable steps to provide meaningful access for LEP persons can be found [here](#) and [here](#).
- **Obtaining information in bulk from utility providers and landlords with multiple units.** The revised FAQs state that "[i]n the case of a bulk utility payment made in accordance with this FAQ, a grantee may provide a utility provider up to nine months from the time the bulk payment was made to satisfy all documentation requirements if a moratorium preventing the shut-off of utilities was in effect in the grantee's jurisdiction for at least one of the six months following the payment."

- **New FAQ 43: Are landlords offered ERA payments subject to source-of-income protection laws?** A landlord's failure to accept payments made using ERA funding might violate state or local source-of-income protection laws, depending on the jurisdiction's laws.
- **New FAQ 44: May ERA grantees impose additional eligibility criteria, including employment or job-training requirements, as a condition of providing ERA assistance to households?** The ERA Program statute provides specific criteria for establishing a household's eligibility, including financial hardship, risk of homelessness or housing instability, qualifying income, and an obligation to pay rent. While tribes and TDHEs have discretion in how they structure their programs, tribes and TDHEs do not have the authority to augment the ERA eligibility requirements by conditioning a tenant's eligibility for assistance on a tenant's employment status, compliance with work requirements, or acceptance of employment counseling, job-training, or other employment services. Any additional eligibility criteria requiring tenants to be employed, accept employment services, or comply with work requirements are not permissible.
- **New FAQ 44: If two grantees learn that they both provided rental or utility assistance to a household intended to cover the same months' expenses, is one grantee required to recover its assistance payments from the household, landlord, or utility provider?** An ERA Program grantee may discover that a household has received ERA assistance from multiple grantees intended to cover the same period of rent, utilities, rental arrears, or utility arrears. In such cases, the grantee may decline to recover its payment and instead recharacterize it as assistance covering a different period of eligible rental or utility expenses, if:
 - The grantee documents, in accordance with ERA records requirements, which expenses its funds ultimately covered; and
 - The grantee confirms that the household was eligible for all assistance it received, including ensuring that the total number of months of financial assistance received by the household does not exceed statutory limits, as described in FAQ 10.

For example, if a state grantee and a tribal grantee both provided assistance to the same household intended to cover rental arrears arising from January and February, either the state grantee or the tribal grantee could recharacterize its assistance as instead covering rental arrears arising from March and April. However, the state or tribal grantee must document the rental arrears ultimately covered by its payment and must confirm that the household was eligible for assistance with respect to all four months of arrears.

2. 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 July 7, 2022, over 130 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. NCAI Mid-Year

The National Congress of American Indians held its 2022 Mid-Year Conference & Marketplace in Anchorage, Alaska on June 13–16, 2022. The Conference included a housing panel during which representatives from tribal housing authorities gave presentations on successes in tribal housing. Mr. Walter's highlight one of the resolutions ANC 22-044: "Calling Upon Congress, Alaska, and HUD to Take Actions for the Equal Treatment of Tribal Housing After the *Mael v. AVCP* Decision of the Alaska Supreme Court." The *Association of Village Council Presidents Regional Housing Authority v. Mael* case involved a mutual help and occupancy agreement (MHOA) home for which the agreement was expired but the home had not yet been conveyed. Mael sued the regional housing authority for injuries from a boiler that exploded. The court held that the regional housing authority was liable, as it had an independent tort duty inspect the boiler, even though the MHOA had terminated. Mr. Walters noted that this case is of a concern for Alaska tribes, and may cause uncertainty for tribes in other states as well.

2. 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. During that Conference, NAIHC will help set up meetings between tribes and members of Congress. Registration for the conference should be open the week of July 11, 2022.

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 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.

3. 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 [here](#).

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.