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MEMORANDUM

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To: TRIBAL HOUSING CLIENTS

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

Re: *USDA Section 502 Home Loan Program*

On July 21, 2022, the Native CDFI Network (NCN) hosted a webinar providing updates on the U.S. Department of Agriculture (USDA) Section 502 housing direct loan program to borrowers (“502 Home Loan Program”). This memorandum provides a synthesis of information presented during the call.

I. USDA Section 502 Home Loan Program Overview

U.S. Representative Sharice Davids and USDA-Rural Development Under Secretary Xochitl Torres Small provided an overview of the 502 Home Loan Program. Leaders from the 502 Home Loan Program pilot project (“502 Pilot Project”), South Dakota Native Homeownership Coalition members Tawney Brunsch, Joanna Donohoe, Stephanie Provost, and Lakota Vogel, also presented information.

The USDA 502 Home Loan Program provides home loan assistance to rural families with low or modest income. Although this program is available on tribal land, only six of the 6,194 direct loans that the USDA provided in Fiscal Year (FY) 2019 were to borrowers on tribal land. In 2018, the USDA launched the 502 Pilot Project in partnership with Native CDFIs in South Dakota (Four Bands Community Fund on the Cheyenne River Indian Reservation and Mazaska Owecaso Otipi Financial on the Pine Ridge Indian Reservation) to help Native American families obtain home ownership. The South Dakota tribes received \$2 million under the 502 Pilot Project and consider the program to be a success.

The Native American Rural Homeownership Improvement Act bills (“NARHI Act”) (S. 2092, H.R. 6331) are bipartisan bills being co-sponsored by eight U.S. Senators and three U.S. Representatives, respectively. Attempting to build on the success of the 502 Pilot Program, the NARHI Act would deliver \$50 million from the USDA 502 Home Loan Program to Native CDFIs to provide home loans in tribal communities. If passed, the NARHI Act would make the 502 Pilot Project permanent and expand the program to provide accessibility to tribes across the country. The NARHI Act would also increase the amount of loan funding available for tribal communities to bolster local Native CDFIs. In addition, it authorizes an operating grant for Native

CDFIs who re-lend under this program and appropriates \$1 million annually to provide technical assistance to Native CDFIs.

Joanna Donohoe commented that more sponsors are needed to move the NARHI Act bills forward. Increasing the number of members of Congress sponsoring this legislation will improve the likelihood that the bills will be passed. She therefore recommended that tribal members reach out to their members of Congress to advocate for these bills. This is particularly true for states in which there is a high percentage of Native Americans. She also noted that because this program is under the Senate Banking Committee, many of the Senators in that Committee unfamiliar with the housing needs of Indian country. Tribal advocacy is therefore needed to inform the Senators regarding the positive benefits of how the NARHI Act will benefit Indian country. Tribal members can use the Native CDFI letter template to request co-sponsorship, which can be found [here](#).

One of the tribal leaders of the 502 Pilot Project remarked that the 502 Home Loan Program is not the only loan program available to Native Americans. However, the 502 Home Loan Program is one of the most efficient programs through which Native Americans can obtain home loans. The lack of capital available to Native Americans for home loans limits the number of homeowners who can be served. The 502 Home Loan Program addresses that lack of capital by broadening the resources available to Native American homeowners in rural areas and on tribal reservations.

Another tribal leader of the 502 Pilot Project discussed the additional challenges that Native Americans face in obtaining home loans. She highlighted the difficulty in obtaining mortgages on trust land. Many lenders view these loans as a high risk and are reluctant to provide home loans for homes on trust land. This limits the capital available to Native Americans for home loans on trust land. The 502 Home Loan Program helps address that limited capital by providing an opportunity to leverage federal funds with private resources to do business on tribal land.

The tribal leaders of the 502 Pilot Project also discussed the improvements that can be made in the 502 Home Loan Program. They proposed that allowing Native CDFIs to use the 502 Home Loan Program funding through their own home loan products and tools will better fit the needs of Native Americans. Representative Davids responded that there would be a substantial benefit in providing the Native CDFIs with the flexibility to use the 502 Home Loan Program funding in ways that are tailored to Indian country.

Representative Davids underscored the fact that Native CDFIs have the detailed knowledge of the needs in Indian country necessary to effectively help Native Americans obtain loans. When capital is deployed to native CDFIs, the impact in Indian country is much greater. Representative Davids further noted the importance of making sure that federal policy makers include Native voices when discussing federal policy that will impact tribal business communities.

Representative Davids has introduced a bill in the U.S. House of Representatives that would double the funding for the U.S. Small Business Administration's Office of Native American Affairs (ONAA). the legislation would also expand the ONAA's mission to improve the government-to-government relationship with tribes and Native Hawaiian organizations, as well as

provide the office with the ability to issue grants, establish field offices and conduct tribal consultations. Representative Davids recommended that tribal leaders advocate for this bill to increase resources available for Native American communities.

II. Questions and Comments from Participants

Below are comments and questions raised by participants, along with the responses by webinar presenters to some of the comments or questions (Treasury did not provide a response to each comment; where they did respond we have provided that response below the comment or question).

- Federal, state, and tribal policy makers are turning to Native CDFIs to jump-start the flow of capital to Native American homeowners. What is it about Native CDFIs that draw policy makers to use them?
 - Representative Davids responded that utilizing those individuals who are doing the boots-on-the-ground work and who have a keen knowledge of the community makes the program more effective.
- The private loan sector is not on the same page of turning to Native CDFIs. The private lenders do not see the benefit of serving Indian country because the loan amounts do not provide enough rewards for the lenders. The participant asked what else could be done to increase private sector interest in investing in Indian country.
 - Under Secretary Small remarked that the significant amount of technical assistance needed as part of increasing loans in Indian country can draw philanthropic partners into making investments. This in turn can lure private lenders to make investments in Indian country.
- Many CDFIs are limited in capacity. What can be done to make policy makers understand that increasing capacity will help increase investments in Indian country.
 - Representative Davids responded that it can be beneficial to highlight those limits in capacity and the need for technical assistance. It will also be helpful for Native CDFIs to more clearly articulate what types of technical assistance they need and how a lack of technical assistance impacts Indian country. Policy makers need to understand that capacity means more than simply having enough staff and that it also includes increasing operating funds and technical knowledge of loan programs.
- Many lenders do not want to invest in Indian country because they do not believe they will have enough security for their investments. This can be caused by the language in tribal codes and the procedures of tribal courts. What can be done to overcome this?
 - Increasing the comfort-level of lenders of investing in Indian country is critically important. The boots-on-the-ground work is key to accomplishing that and to building relationships with lenders. Having leaders from state governments advocate for investment in Indian country can also be beneficial. If state governments and loan programs develop partnerships with tribal loan program,

private investors will become more comfortable with providing loans in rural areas and Indian country.

- Some tribal leaders are looking at implementing a tribal deed of trust process as opposed to a leasehold mortgage process in the rare and unlikely event of foreclosure. The difference is that deeds of trust offer the opportunity to resolve loan defaults at the tribal land office as opposed to getting caught up in tribal courts.
- Private lenders fear that there will not be enough security for their loans. However, data actually demonstrates the opposition. It is therefore critical to provide more statistics on how secure tribal loan programs are in reality. Many investors simply do not have enough knowledge of the tribal loan programs to make informed decisions. A tribal code providing for procedures using deeds of trust is also useful.
- Staff of some private lenders often do not believe it is legal to provide home loans under tribal codes. It may be beneficial to revise the tribal codes before the private lenders feel that it is legal can make 502 Home Loan Program loans. Is this being considered?
 - Many tribes are considering ways to revise their tribal codes to provide a more transparent and efficient loan process.

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.