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MEMORANDUM

October 6, 2022

To: TRIBAL HOUSING CLIENTS

From: Ed Clay Goodman and Cari 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) Legislative Committee meeting held on October 6, 2022. NAIHC Executive Director Tony Walters presided over the Legislative Committee meeting.

I. NAIHC Legislative Committee Meeting

a. Legislative Update

Congress passed a Continuing Resolution for Government Funding. On September 30, 2022, Congress was able to pass a Continuing Resolution to fund the Government through at least December 16, 2022, avoiding a shut-down and providing funding for government programs through that date. As will be discussed further below, the Continuing Resolution did not include the hoped-for extension of the expenditure deadline for the Emergency Rental Assistance Program.

NAHASDA reauthorization efforts are continuing. Two versions of the NAHASDA bill 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 11, bipartisan cosponsors. It has passed out of the Senate Committee on Indian Affairs (SCIA), and the next step is a vote by the full Senate. Additionally, the S. 2264 bill version of NAHASDA was included in the Senate's draft fiscal year (FY) 2023 Transportation, Housing and Urban Development, and Related Agencies (THUD) appropriations, which was released on July 27, 2022. At this time, NAIHC anticipates NAHASDA reauthorization passing via the Senate THUD appropriations or the legislative tribal "minibus," which includes 13 other tribal bills and has been included in the Senate FY 2023 THUD appropriations and added as an amendment to the National Defense Authorization Act (NDAA).

If the Senate NAHASDA bill passes the Senate, it would still then have to pass the House. However, the House has expressed concerns with S. 2264. For example, the House leadership wants any NAHASDA bill to include language that targets 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 Freedmen descendants.

NAIHC is increasing efforts to encourage Senate Leadership to adopt the language in the Senate THUD appropriations. A link to a template letter to write to a Member of Congress can be found at this [link](#).

The House NAHASDA bill, H.R. 5195, has one sponsor, Financial Services Committee Chair Maxine Waters (D-CA). This bill was not included in the House THUD appropriations. 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 concerning provisions that NAIHC does not support. First, it caps the annual Indian Housing Block Grant Program (IHBG) appropriations at \$680 million per year. This 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.

The American Housing and Economic Mobility Act, S. 1368 and H.R. 2768. The American Housing and Economic Mobility Act, is another pending bill that includes a provision reauthorizing NAHASDA for a period of ten years. It would provide up to \$2.5 billion for NAHASDA in the first year and would allow tribes access to Section 8 housing vouchers. This bill is partisan, national in scope, and unlikely to pass.

Native American Rural Homeownership Improvement Act (NARHI Act). The NARHI Act has ten bipartisan cosponsors in the Senate (S. 2092) and six 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 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. There has been ongoing USDA support for the passage of the bill and webinars hosted by the Native Community Development Financial Institutions Fund. NAIHC is working to gain more cosponsors in the bill and has made available template letters for Tribal programs to send to their representatives in Congress.

HUD-VASH included in NAHASDA Reauthorization. The Tribal HUD-VASH program has been included in the larger efforts to reauthorize NAHASDA. It has also been included in the legislative “minibus,” and included in the FY 2023 Senate THUD appropriations and added as an amendment to the NDAA.

Tribal Trust Land Home Ownership Act, S. 3381. The Tribal Trust Land Home Ownership Act has four bipartisan cosponsors. This Act sets forth requirements for the processing of a proposed residential leasehold mortgage, business leasehold mortgage, land mortgage, or right-of-way document by the Bureau of Indian Affairs. Notably, the Act would establish timeframes for the realty and land title. A hearing was held on the Act on February 16, 2022, and it was reported out of the Senate Committee on Indian Affairs on May 18, 2022. It was included in the NDAA Amendments.

Native American Direct Loan Improvement Act, S.4505. On July 12, 2022, Senator Mike Rounds (R-SD) introduced a bill involving the U.S. Department of Veterans Affairs (VA) Native American Direct Loan (NADL) program in the Senate. 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. Last year, Senator Rounds requested a Report (#GAO-22-104627) by the U.S. Government Accountability Office (GAO) on the effectiveness of the NADL program, which can be found [here](#). The new bill addresses some of the issues found in the GAO Report and would provide funding for Native CDFIs to do more outreach for the program to increase veteran participation. Additionally, the bill would adopt the relending model through Native CDFIs, which would provide Native CDFIs with more flexibility

to use the funding in a way that fits Native communities. The next step is for the SVAC to report the bill out of SVAC to be considered by the full Senate, which was anticipated to occur in September 2022, but has yet to occur.

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).

On June 30, 2022, the House Appropriations Committee approved the draft FY 2023 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. Below is a breakdown of how the House draft THUD bill compares to the Senate draft THUD bill.

House THUD	Senate THUD
<p>\$1 billion – Total for Tribal Housing</p> <ul style="list-style-type: none"> • \$772 million – IHBG • \$150 million – IHBG Competitive • \$70 million – ICDBG • \$7 million – Training/TA • \$1 million – Title VI Loan Guarantees 	<p>\$1.052 billion – Total for Tribal Housing</p> <ul style="list-style-type: none"> • \$819 million – IHBG • \$150 million – IHBG Competitive • \$70 million – ICDBG • \$7 million – Training/TA • \$1 million – Title VI Loan Guarantees

NAIHC continues to work with Members of Congress to encourage the adoption of the Senate language for THUD funding. NAIHC also expressed a goal to increase engagement with the Office of Management and Budget (OMB), specifically the new Tribal advisor Liz Carr, in order to increase budget requests.

c. HUD Funding Opportunities Update

The FY 2022 IHBG formula grant final amounts have been posted and grantees should be receiving grant agreements soon. The FY 2023 IHBG grant estimates were posted June 1, 2022.

The FY 2022 IHBG competitive grant provides up to \$5 million per grant. This year, there will be \$130 million available nationally, so tribes and TDHEs are encouraged to apply for this funding, even if they already have an IHBG grant. Awards will range from \$500,000 to \$7,500,000. The deadline to submit applications through [grants.gov](https://www.grants.gov), has been extended to **January 24, 2023**. HUD will be hosting webinars on November 8th and 9th to discuss the application process.

On July 19, 2022, HUD issued a Notice of Funding Opportunity (NOFO) to invite applications from eligible applicants for the ICDBG grant program. HUD will award approximately \$92 million for the ICDBG Program. Awards will range from \$500,000 to \$7,500,000. Applications are due no later than **October 24, 2022**.

The HUD Continuum of Care (CoC) Program is designed to empower and engage with communities to end homelessness HUD Continuum of Care. The deadline to apply for FY 2022 CoC Annual Program Funding was **September 30, 2022**. 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](#).

II. Treasury Programs Update

a. ERA Program

As we have reported in prior memos, tribes received an \$800 million set-aside from the ERA Program funds to assist eligible households who are facing eviction due to unpaid rents and utilities, or the inability to pay prospective rents and utilities. Under the Consolidated Appropriations Act, 2021, Treasury is required to recapture “excess funds” from amounts that grantees have “not obligated” from their initial ERA allocations. The statute required Treasury to begin recapturing these excess funds on September 30, 2021.

On July 18, 2022, Treasury released a “Notice Regarding Recapture and Reallocation of Tribal ERA1 Funds” (“Treasury Notice”) regarding the Treasury Emergency Rental Assistance Program (“ERA Program”). In the Treasury Notice, Treasury states that it has determined that it will not involuntarily recapture ERA funds from tribes or tribally designated housing entities (TDHEs), even if such funds may be considered “excess funds”. After August 19, 2022, Treasury

will reallocate funds that tribes and TDHEs voluntarily return to Treasury. As of June 30, 2022, tribal ERA programs have spent \$411,607,397 out of \$800 million (51.5%).

The Treasury Notice specifically states that “any funds from the initial ERA1 disbursement (not including funds received through reallocation) that are unobligated on September 30, 2022 must be returned to Treasury at that time. This is a statutory requirement, and Treasury cannot provide flexibility on this deadline.” The Treasury Notice further states that tribes and TDHEs may be permitted to use reallocated funds through December 29, 2022, if the funds qualify for this 90-day extension. Treasury will provide guidance on the extension in the future.

ERA Program funds expired on **September 30, 2022** and are no longer available to provide financial assistance and housing stability services to eligible households. The Continuing Resolution did not include funds to continue funding the ERA Program, however, funds can be used for administrative expenses beyond the September 30, 2022 deadline.

Further, tribes that receive reallocated funds have until December 29, 2022 to spend those reallocated funds. When a Tribe submits a request for reallocated funds, Treasury will automatically provide an extension. One participant commented that they have received a reallocation from Treasury, as well as a notice indicating that if they received a reallocation, they automatically would receive an extension until December 29, 2022 to spend those funds.

NAIHC is working on efforts to extend the expenditure deadline for the ERA Program, including advocating to Congress on the importance of this extension. NAIHC has drafted letters, available at this [link](#), that tribes can use to send to their own members of Congress. NAIHC notes ongoing resistance to reauthorizing support programs authorized during the COVID pandemic.

The Treasury DTLL also provides some initial guidance on timing related to closeout activities for the ERA Program. The Treasury DTLL states that tribes and TDHEs “must submit all final financial, performance, and other reports as required by the ERA1 Award Terms no later than 120 calendar days after the end date of the period of performance.” Further, tribes and TDHEs “may only charge administrative costs to the ERA1 award after September 30, 2022 (or December 29, 2022 for reallocated funds upon the grant of an extension) for award closeout activities, such as preparation of final financial and performance reports.” Treasury has indicated that it will release further closeout guidance in the coming months.

NAIHC hosted a webinar on June 1, 2022 that outlines the various ERA Program timeframes and procedures. The webinar can be found on NAIHC’s YouTube page.

b. HAF Program

The American Rescue Plan Act of 2021 (ARPA) provides approximately \$498 million in funding to tribes for the HAF Program. This 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 September 1, 2022, over 131 tribes have received HAF plan approval and funds.

One participant asked whether Treasury plans to reallocate unused HAF funds. Mr. Walters responded that he has not yet seen any Treasury guidance related to reallocations of HAF funds but will look into it.

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. NAIHC is also launching a new [webpage](#) to help Native homeowners find ERA Program and HAF program resources.

III. Other Matters

a. NAIHC Legislative Conference and Legislative Committee Meetings

The annual NAIHC Legal Symposium will be held on December 5-7, 2022 at Bally's Hotel and Casino Resort in Las Vegas, Nevada. The preliminary agenda is as follows:

- December 5, 2022: Legislative Committee Meeting
- December 6, 2022: General Opening Sessions, Two Breakout Blocks, Reception
- December 7, 2022: Three Breakout Blocks, General Closing Session

Registration opens the week of October 10, 2022 and registration can be done at this [link](#).

Conclusion

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