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## MEMORANDUM

November 14, 2022

To: TRIBAL HOUSING CLIENTS

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

Re: *NAIHC Legislative Committee Meeting*

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This memorandum provides a synthesis of information presented during the National American Indian Housing Council (NAIHC) Legislative Committee meeting held on November 10, 2022. NAIHC Executive Director Tony Walters presided over the Legislative Committee meeting.

### I. NAIHC Legislative Committee Meeting

#### a. *Legislative Update*

***Elections.*** The midterm elections for the U.S. Congress were held on November 8, 2022. As of November 10, 2022, the elections results have not been finalized and it is unclear which party will control the Senate. The runoff for the Georgia Senate seat will be held December 6, 2022. However, it is expected that Republicans will take over control of the House.

***Congress passed a Continuing Resolution for Government Funding.*** On September 30, 2022, Congress passed 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 (“ERA Program”). Congress will need to either pass an omnibus spending package or pass another Continuing Resolution by December 16, 2022 to avoid another shutdown.

#### b. *Budget and Appropriations*

The Biden Administration released its Fiscal Year (FY) 2023 budget in March 2022, and the numbers are nearly identical to the FY 2022 Indian Housing Block Grant (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 United States Department of Agriculture (USDA) 502 Pilot Program; and \$14 million in funding for the Bureau of Indian Affairs (BIA) Housing Improvement Program (HIP).

On June 30, 2022, the House Appropriations Committee approved the draft FY 2023 Transportation, Housing and Urban Development, and Related Agencies (THUD) Appropriations Subcommittee bill. The bill proposes \$62.7 billion for the U.S. Department of Housing and Urban Development’s (HUD) 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. NAIHC continues to work with Members of Congress to encourage the adoption of the Senate language for THUD funding.

<b>House THUD</b>	<b>Senate THUD</b>
<p><b>\$1 billion – Total for Tribal Housing</b></p> <ul style="list-style-type: none"> <li>• \$772 million – IHBG</li> <li>• \$150 million – IHBG Competitive</li> <li>• \$70 million – ICDBG</li> <li>• \$7 million – Training/TA</li> <li>• \$1 million – Title VI Loan Guarantees</li> </ul>	<p><b>\$1.052 billion – Total for Tribal Housing</b></p> <ul style="list-style-type: none"> <li>• \$819 million – IHBG</li> <li>• \$150 million – IHBG Competitive</li> <li>• \$75 million – ICDBG</li> <li>• \$7 million – Training/TA</li> <li>• \$1 million – Title VI Loan Guarantees</li> </ul>

*c. Tribal Housing Legislation*

As we have reported in prior memoranda, two versions of the Native American Housing Assistance and Self-Determination Act (NAHASDA) bill have been introduced: S. 2264 and H.R. 5195. The Senate bill (S. 2264) has eleven bipartisan cosponsors. It has passed out of the Senate Committee on Indian Affairs (SCIA), and the next step would be 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 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 thirteen other tribal bills and has been included in the Senate FY 2023 THUD appropriations.

Tribal advocates have also sought to attach the NAHASDA bill to the National Defense Authorization Act (NDAA), which is a must-pass bill. However, the most recent amendments to the NDAA did not include the tribal minibus. Mr. Walters noted that there is a general hold on all Senate Indian Affairs tribal bills until certain Indian Affairs Committee members receive assurances that other tribal bills are being given due consideration by Congress. NAIHC is sending letters to Senate Majority Leader Charles Schumer (D-N.Y.) and Senate Minority Leader Mitch McConnell (R-KY.) to support the NAHASDA bills.

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. One of the issues is that 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.

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 contains concerning provisions that NAIHC does not support. First, it caps the annual 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.

One of the participants remarked that NAHASDA has not been as useful for small tribes, because they have smaller numbers of enrolled tribal members, which means they receive less funding through the IHBG formula grants. Additionally, because of the way that NAHASDA is set up, the tribe has lost funding to support these homeownership homes and has not had enough funding to support the construction of new homes for tribal homeownership. The participant noted that where the IHBG competitive grants are concerned, the smaller tribes are often unable to obtain any funding because of the competitive nature of the grants. Mr. Walters remarked that part of the issue is due to the lack of any substantial increases in NAHASDA funding since 1998. The fact that NAHASDA has not been reauthorized since 2013 also has a detrimental effect on tribes obtaining the funding they need to support their tribal housing.

Another participant remarked that the competitive nature of NAHASDA grants also harms medium and larger tribes as well. One place on which to focus advocacy efforts is to comment to HUD that there is no statutory requirement for the scoring/leveraging system used by HUD for the competitive grants.

***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. NAIHC is working to gain more cosponsors for the bills 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 (Veterans Affairs Supportive Housing) program has been included in the larger efforts to reauthorize NAHASDA. It has also been included in the legislative tribal “minibus,” 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 BIA. Notably, the Act would establish timeframes for the realty and land title process. 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. The new bill 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.

*d. HUD Funding Opportunities Update*

The FY 2022 IHBG competitive grant provides up to \$7.5 million per grant. This year, there will be approximately \$129 million available nationally, so tribes and tribally designated housing entities (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://grants.gov), has been extended to **January 24, 2023**. HUD will be hosting webinars on November 8<sup>th</sup> and 9<sup>th</sup> to discuss the application process.

*e. HUD Program & Consultation Updates*

1. Consultation on Tribal Directory Assessment Tool (TDAT) Enhancement Project

HUD is currently in the process of updating its Tribal Directory Assessment Tool (TDAT) through the TDAT Enhancement Project. TDAT is a tool used by HUD to assist HUD staff in identifying the federally recognized Indian tribes to consult with, pursuant to Section 106 of the National Historic Preservation Act (NHPA), when assessing potential impacts a project may have on Tribal cultural resources and sites located on ancestral lands.

**Tribal Consultation Session:** HUD will host a virtual Tribal Consultation via Webex on **November 17, 2022 at 2:00 P.M. Eastern Time**, to solicit tribal feedback on the TDAT Enhancement Project and a proposed Information Request Form associated with the project. The Consultation begins at. Tribal leaders and advocates can join the Tribal Consultation here: <https://ems8.intellor.com/login/845516>. HUD is also inviting Tribal leaders to participate in a 60-day comment period to solicit feedback on an Information Request Form that will be

incorporated into TDAT as part of the TDAT Enhancement Project. Tribal leaders can send their recommendations or comments via email to: [TDAT\\_info@hud.gov](mailto:TDAT_info@hud.gov) by December 13, 2022. Additional information can be found in a [Dear Tribal Leader Letter](#) (October 11, 2022) and in the [TDAT Information Request Form](#).

## 2. HUD Issues Four Additional Waivers Related to Build America, Buy America Act

The Build America, Buy America Act (BABA) (included in the Infrastructure Investment and Jobs Act of November 2021) requires infrastructure projects funded with Federal Financial Assistance to use iron, steel, manufactured products, and construction materials that are produced in the United States. However, Federal agencies have the authority to issue waivers if the waivers are in the public interest. HUD recently published four additional waivers in the *Federal Register* related to the Buy America Domestic Content Procurement Preference (BAP), which is part of the BABA. The waivers can be found [here](#) and [here](#). Under the four new waivers, the BAP will not apply:

1. To infrastructure projects whose total cost is an amount equal to or less than the Simplified acquisition threshold, which is currently \$250,000;
2. For all Small Grants of Federal Financial Assistance that are equal to or below \$250,000;
3. For Minor Components of an infrastructure project, such that a cumulative total of no more than a total of 5 percent of the total cost of the iron, steel, manufactured products, and construction materials used in and incorporated into the infrastructure project, up to a maximum of \$1 million; and
4. In exigent circumstances where life, safety and property could be negatively impacted due to the amount of time needed to secure BAP compliant materials.

Additionally, HUD previously issued a general applicability waiver that delays the applicability of the requirements of BABA for Tribes and TDHEs that are recipients of HUD programs until at least May 14, 2023 (the Notice can be found [here](#)). HUD is working to review and consider all Tribal feedback provided during Tribal consultation on BABA and will provide additional information on the applicability of BABA on Tribes and TDHEs in the near future.

## 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 ERA Program. 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. ERA Program funds expired on September 30, 2022 and are no longer available to provide financial assistance and housing stability services to eligible households. 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.

NAIHC is continuing efforts to advocate to Congress that they retroactively extend the expenditure deadline for the ERA Program for another year. NAIHC has drafted letters, available at this [link](#), that tribes can use to send to their own members of Congress. Mr. Walters noted that if Congress does not pass by the end of 2022 to extend the ERAP expenditure deadline, it is unlikely that it will pass any such bill in 2023.

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. Homeowner Assistance Fund (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 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.

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](mailto: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 Legal Symposium 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 is open and can be accessed at this [link](#).

***Conclusion***

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