



## MEMORANDUM

January 9, 2023

To: TRIBAL HOUSING CLIENTS

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

Re: *NAIHC Legislative Committee*

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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 January 5, 2023, as well as other developments in housing matters. NAIHC Executive Director Tony Walters presided over the Legislative Committee meeting.

### I. NAIHC Legislative Committee Meeting

#### a. Legislative Update

December 23, 2022, Congress passed and the President signed a \$1.7 trillion omnibus Consolidated Appropriations Act, 2023 (“FY 2023 Appropriations Act”) for Fiscal Year (FY) 2023 appropriations. The full text of the draft bill can be found [here](#). The federal government is now funded through September 30, 2023. The FY 2023 Appropriations Act provides \$70.5 billion for U.S. Department of Housing and Urban Development (HUD) programs overall, which is \$4.8 billion (7.4%) more than FY 2022-enacted levels. Of that amount, the FY 2023 Appropriations Act provides \$1.020 billion for Native American Housing Assistance and Self-Determination Act (NAHASDA) programs, to remain available until September 30, 2027. It increases the formula-funded Indian Housing Block Grant (IHBG) by 1.9% to \$787 million for tribes, which is the first substantial increase in the base formula grant program in decades. However, Mr. Walters noted that the FY 2023 Appropriations Act still kept tribal housing funds below the 1998 levels adjusted for inflation. Below is a breakdown of the amounts compared to prior years.

Programs	FY 2022	FY 2023
IHBG	\$772 million	\$787 million
Competitive IHBG	\$150 million	\$150 million
Training and Technical Assistance Grants	\$7 million	\$7 million
Indian Community Development Block Grant (ICDBG)	\$72 million	\$75 million
Title VI Loan Guarantee	\$1 million	\$1 million
Section 184 Loan Guarantee	\$3 million	\$5.5 million

Native Hawaiian Housing Block Grant (NHHBG)	\$22 million	\$22 million
Tribal HUD Veterans Affairs Supportive Housing (HUD-VASH)	\$5 million	\$7.5 million

For the Indian Housing Section 184 Loan Guarantee Program, the FY 2023 Appropriations Act further allows HUD to use funds provided in that bill, together with unobligated funds from previous acts, for the cost of the unobligated guaranteed loans to subsidize a total loan level of \$1.4 billion.

*b. Budget and Appropriations*

The Biden Administration is expected to release its FY 2024 budget in February 2023. In the spring of 2023, the House and Senate appropriations committee will hold hearings, receive feedback from their constituents, and accept letters on legislative priorities from Congressmembers. Congress will aim to start drafting FY 2024 appropriations bills during the summer of 2023, with a September 30, 2023 deadline by which they must pass the appropriations in order to continue funding the Federal Government.

NAIHC will continue to push for the reauthorization of NAHASDA and for more resources for tribal housing. Mr. Walters commented that NAIHC will be increasing engagement with regional housing groups for letter writing campaigns to increase appropriations advocacy.

*c. Tribal Housing Legislation*

**Native American Housing Assistance and Self-Determination Act of 1996.** Now that the 118th Congress has begun, the process for introducing and passing a Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) reauthorization bill will start over. Mr. Walters commented that the Congressional leaders in both the House and Senate that lead the efforts on NAHASDA will hopefully be well-prepared to pass NAHASDA reauthorization in 2023. The two versions of the NAHASDA reauthorization bill introduced in 2021 (S. 2264 and H.R. 5195) had some promising provisions and NAIHC hopes these provisions will be a good foundation on which to reauthorize NAHASDA in 2023. NAIHC will focus its effort in 2023 on advocating that Congress draft one bill, to be passed in both the Senate and House, instead of each chamber drafting and passing separate bills.

**The American Housing and Economic Mobility Act.** The American Housing and Economic Mobility Act was another bill introduced in 2022 that included a provision reauthorizing NAHASDA for a period of ten years. It would have provided up to \$2.5 billion for NAHASDA in the first year and would have allowed tribes access to Section 8 housing vouchers. Tribal housing advocates will continue efforts to reintroduce this bill in 2023.

**Native American Rural Homeownership Improvement Act (NARHI Act).** The NARHI Act would have provided \$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 have expanded a demonstration project currently operating only in

South Dakota. In addition, it would have authorized an operating grant for Native CDFIs who relend under this program and appropriates \$1 million annually for technical assistance to Native CDFIs. Last year, advocates in both the House and Senate indicated they intend to include it in the upcoming farm bill (an omnibus, multiyear package of legislation that governs a variety of agricultural and food programs). Representative Tom Cole (R-OK), Co-Chair of the Native American Caucus, has also been advocating strongly for the bill. Tribal housing advocates will continue efforts to reintroduce this bill in 2023.

***Tribal HUD-VASH.*** The Tribal HUD-VASH aimed to codify a tribal housing initiative between the U.S. Department of Veteran Affairs (VA) and HUD, which pairs HUD housing vouchers with VA case managers and supportive services, to provide rental and housing assistance to permanently house homeless and at-risk veterans in Indian Country. The bill would also have ensured that at least five percent of all HUD-VASH vouchers are set aside for tribes and tribal housing authorities. The Tribal HUD-VASH program has been included in the larger efforts to reauthorize NAHASDA. NAIHC will advocate that the bill sponsors re-introduce this as a standalone bill this year.

***Tribal Trust Land Homeownership Act, S. 3381.*** The Tribal Trust Land Homeownership Act introduced in 2021 set 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 (BIA). Notably, the Act would have established timeframes for the realty and land title process. Senator John Thune's (R-SD) office has already indicated its interest in re-introducing this bill in Congress in 2023.

***Native American Direct Loan Improvement Act.*** The VA Native American Direct Loan (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 2022 bill would have provided funding for Native CDFIs to do more outreach for the program to increase veteran participation. Additionally, the bill would have adopted 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. NAIHC will advocate that the bill sponsors re-introduce this as a standalone bill this year.

*d. HUD programs*

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 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://www.grants.gov) has been extended to **January 24, 2023**. The [Dear Tribal Leader Letter](#) (DTLL) addressing the application extension deadline can be found [here](#).

The FY 2022 ICDBG grant program application period is now closed. HUD is in the process of reviewing the 152 applications received and will announce awards in April, 2023. HUD is reviewing the tribal consultation feedback and will be using the feedback to improve future Notices of Funding Opportunity (NOFO).

The comment period is currently open for a number of HUD programs. HUD sent out a DTLL for the ICDBG imminent threat program on October 21, 2022. HUD is seeking feedback on grant ceilings and programmatic improvements. The extended comment period just closed.

On December 21, 2022, HUD published a [proposed rule](#) (“Proposed Rule”) amending the regulations for the Section 184 Indian Home Loan Guarantee Program (“Section 184”). Section 184 is a home mortgage program that allows Native American borrowers to purchase a home with a low down-payment and flexible underwriting. The Proposed Rule will modernize the Section 184 program and provide detailed processes and requirements that HUD intends to improve and increase homeownership in Indian Country.

The Proposed Rule includes approximately 141 regulations, divided into nine subparts (Subparts A–I), which will be codified at 24 C.F.R. parts 48 and 1005. Dep’t of Housing and Urban Development, Proposed Rule: Strengthening the Section 184 Indian Home Loan Guarantee Program, at 78324, 78325 (Dec. 21, 2022). The Proposed Rule “remove[s] outdated sections and replac[es] them with the following: definitions, eligibility requirements for Lenders, rules governing participation by Indian Tribes, underwriting requirements, rules on the closing and endorsement process, loan fees, servicing requirements submission of Claims, and standards governing monitoring, reporting, sanctions and appeals.” *Id.* at 78325. HUD published a DTLL on the Proposed Rule on the December 21, 2022, which can be found [here](#). HUD will be holding tribal consultations on the Proposed Rule in January and February, and the deadline for public comments is **March 17, 2023**. More information on the tribal consultations can be found [here](#).

One participant of the Legislative Committee commented that as soon as the Proposed Rule is finalized, HUD has indicated that it will revise the Section 184 loan handbook, which provides guidance on the requirements and procedures for the Section 184 program. The participant commented that the handbook has not been updated in a meaningful way since 2014. He noted the importance of tribes and TDHEs providing feedback to HUD on both the Proposed Rule and on any desired changes to the handbook and underwriting guidelines.

HUD has also published a Request for Information (RFI) for HUD’s Community Development Block Grant (CDBG) – Disaster Recovery Program RFI. The full RFI can be found [here](#). This program provides grants to states, local governments, and Indian tribes after a major disaster to help with resilient long-term recovery. While tribes are eligible for this grant program, HUD has noted that no tribe has yet received this grant. HUD is therefore requesting feedback on how to improve the program for tribes (policy revisions, fund allocations, etc.). The deadline for submitting feedback is **February 21, 2023**.

Mr. Walters remarked that HUD will be issuing guidance on the HUD Office of Housing Counseling and how to integrate HUD housing counseling with HUD Office of Native American Programs (ONAP). The HUD Office of Housing Counseling conducted some tribal listening sessions in 2022 and is currently working to consider and integrate that feedback into a proposed rule.

*e. Treasury Programs Update*

1. ERA Program

The U.S. Department of Treasury's Emergency Rental Assistance Program ("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 now be used only for administrative expenses beyond the September 30, 2022 deadline. Tribes that received reallocated funds had until December 29, 2022 to spend those reallocated funds. That December 29, 2022 deadline was a hard deadline, so tribes can no longer write any checks for ERA Program funds, including for prospective rent.

Cari Baermann commented that one of the tribal clients of Hobbs, Straus, Dean & Walker, LLP is very interested in continuing to advocate for a legislative extension of the ERA Program expenditure deadline. That Tribe has a significant amount of reallocated money that it would still like to spend. The tribe would also like to coordinate its efforts with other tribes and NAIHC to further advocate on this issue. If any tribes are interested, we suggest that they contact Jennifer P. Hughes, Ed Clay Goodman, or Cari Baermann at the contact information provided at the end of this memo.

Mr. Walters stated that NAIHC is also continuing efforts to convince Congress to 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 it is still possible for there to be an extension, as Congress often makes retroactive changes to legislation, but that such an extension is unlikely.

2. HAF Program

The American Rescue Plan Act of 2021 ("ARP Act") provides approximately \$498 million in funding to tribes for the Homeowner Assistance Fund (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. As of January 5, 2023, over 180 tribes have received HAF plan approval and funds.

*f. Other Matters*

3. NAIHC Legislative Committee Meetings and Future Conferences

The NAIHC Legislative Committee meetings will continue to be held the first Thursday of each month on Zoom. 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.

NAIHC will be holding its Annual Legislative Conference on March 6–8, 2023 in Washington, D.C. NAIHC will open registration for the Conference soon. NAIHC will also be holding its Annual Convention on May 8–11, 2023 in Waikoloa, Hawaii. NAIHC will open registration for the Conference soon.

Tribes and TDHEs can find more information and trainings on tribal housing programs through NAIHC's YouTube channel, which can be found [here](#).

### ***Conclusion***

If you have any questions about this memorandum or any of the topics discussed in this memorandum, please contact Ed Clay Goodman ([egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com) or 503-242-1745), Jennifer P. Hughes ([jhughes@hobbsstrauss.com](mailto:jhughes@hobbsstrauss.com) or 202-822-8282), or Cari Baermann ([cbaermann@hobbsstrauss.com](mailto:cbaermann@hobbsstrauss.com) or 503-242-1745).