



## MEMORANDUM

February 2, 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 February 2, 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

The 118<sup>th</sup> Congress is still working on organizing itself and appointing chairs for the various Senate and House committees. NAIHC has been meeting with Congressmembers and their staff in both the House and Senate to advocate for various tribal housing bills, discussed further below. NAIHC will continue to meet in particular with THUD Appropriations Chairs Senator Brian Schatz (D-HI) and Representative Tom Cole (R-OK), who have both been supportive of tribal housing.

On 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 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. 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 has announced that it will release its FY 2024 budget March 9, 2023. That is the first step in the appropriations process. In the spring and summer 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 NAHASDA reauthorization bill will start over. 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 single bill, to be passed in both the Senate and House, instead of each chamber drafting and passing separate bills.

One participant asked whether there has been any Congressional discussion on the difficulty small tribes face obtaining funding under NAHASDA. Mr. Walters commented that many Congressional members are of the opinion that new rulemaking would only occur after NAHASDA is reauthorized, and that they would then only address issues with NAHASDA funding for small tribes through that new rulemaking.

**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. One participant commented that Congress set aside \$1.75 million in the FY 2023 Appropriations for the pilot. This is a good indication that the NADL bill would receive continued support in 2023, once introduced.

***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. 70.*** On January 25, 2023, Senator John Thune (R-SD) introduced the Tribal Trust Land Homeownership Act. It currently has four bipartisan cosponsors: Senator Thune, Senator Tina Smith (D-MN), Senator Mike Rounds (R-SD), and Senator Jon Tester (D-MT). The bill 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 (BIA). Notably, the Act would establish timeframes for the realty and land title process. One participant asked whether the bill would address BIA title search reports and conveyances. Mr. Walters commented that those are likely included in the bill.

***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. One participant commented that this bill will likely be introduced and marked up in February 2023. However, Senator Sherrod Brown (D-OH), the Chair of the Senate Committee on Banking, Housing, and Urban Affairs, has already expressed

some concerns with parts of the bill. NAIHC will be meeting with Senator Brown to address these concerns and advocate that the bill be passed.

*d. HUD Programs*

The FY 2023 IHBG competitive funding (\$150 million) and FY 2023 Indian Community Development Block Grant (ICDBG) funding (\$70 million) will be available soon. Additionally, ICDBG imminent threat funding is still available and HUD encourages tribes and Tribally Designated Housing Entities (TDHE) to apply.

As we have reported in previous memoranda, 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. HUD has been holding tribal consultations on the Proposed Rule, and will continue to do so this month. The deadline for public comments is **March 17, 2023** at <https://www.regulations.gov/>. More information on the tribal consultations can be found [here](#).

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**.

The HUD Office of Housing Counseling has published the Housing Counseling Proposed Rule outlining housing counselor certification requirements for housing counseling conducted in connection with the IHBG and the ICDBG programs. HUD’s Housing Counseling Program provides counseling to individuals about financing, maintaining, renting, or owning a home. The Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Housing and Urban Development Act of 1968 to require entities and individual counselors to be certified by HUD in order to provide such counseling services. Most tribes, TDHEs, and tribal entities are currently ineligible to become HUD-approved housing counseling agencies and therefore are generally not eligible to receive HUD housing counseling grants.

Interested parties, including tribes and TDHEs, can submit public comments on the Housing Counseling Proposed Rule through **March 27, 2023** at <https://www.regulations.gov/>. HUD intends to conduct additional Tribal consultation before issuing a final rule.

*e. Treasury Programs Update*

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. 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.

Mr. Walters stated that NAIHC is 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 while it is possible for there to be an extension, such an extension is unlikely.

### 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. Mr. Walters commented that it is in tribes' best interest to submit their HAF plans as soon as possible, if they have not yet done so. He noted that if HAF funds remain unclaimed, it can be an indication to Congress that those funds are not needed, which, in turn, may cause Congress to decrease the amount of funding appropriated for tribal housing in the future.

### *f. Other Matters*

#### 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. Registration for the Annual Legislative Conference is now open. Tribes and TDHEs can reach out to NAIHC to help arrange tribal visits with Congressmembers and their staff. Additionally, NAIHC is willing to hold advocacy training webinars before the Legislative Conference to help tribes and TDHEs determine advocacy strategies.

NAIHC will also be holding its Annual Convention on May 8–11, 2023 in Waikoloa, Hawaii. NAIHC will open registration for the Annual Convention 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) or Cari Baermann ([cbaermann@hobbsstrauss.com](mailto:cbaermann@hobbsstrauss.com) or 503-242-1745).