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MEMORANDUM

March 7, 2023

TO: TRIBAL HOUSING CLIENTS

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

RE: *NAIHC Legislative Committee Meeting*

This memorandum provides a synthesis of information presented during the National American Indian Housing Council (NAIHC) Legislative Committee meeting held on March 6, 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

After a late start this year, the 118th Congress is beginning to draft and introduce legislation and hold meetings with constituents and interested parties. The United States Senate Committee on Indian Affairs (SCIA) is holding a hearing on May 8, 2023 on “Native Communities' Priorities for the 118th Congress”. 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 the Transportation, Housing and Urban Development (THUD) Appropriations Committee Chairs Senator Brian Schatz (D-HI) and Representative Tom Cole (R-OK), who have both been supportive of tribal housing.

b. Budget and Appropriations

The Biden Administration has announced that it will release its Fiscal Year (FY) 2024 budget on March 9, 2023. That is the first step in the appropriations process. In the spring and summer of 2023, the House and Senate appropriations committees 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 the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) and for more resources for tribal housing. NAIHC is also working with the Senate THUD Appropriations Committee Chairman Schatz and Ranking Member Cindy Hyde-Smith

(R-MS), and House THUD Appropriations Chairman Tom Cole and Ranking Member Mike Quigley (D-IL), to advocate for increased appropriations funding for tribal housing.

Mr. Walters noted that while the FY 2023 Appropriations Act increased the formula-funded Indian Housing Block Grant (IHBG) by 1.9% to \$787 million for tribes, it still kept tribal housing funds below the 1998 levels when adjusted for inflation. Below is a breakdown of the FY 2023 tribal housing funding. Mr. Walters noted that tribal housing funding makes up only one percent of the FY 2023 budget for the United States Department of Housing and Urban Development (HUD).

FY23 Final Appropriations	
Indian Housing Block Grant:	\$787M (+\$15M)
IHBG Competitive:	\$150M
ICDBG:	\$75M (+2.9M)
TTA:	\$7M
184 Loan Guarantees:	\$5.5M (+\$2M)
Title VI Loan Guarantees:	\$1M
HUD-VASH:	\$7.5M (+\$2.5M)
Total FY2023 HUD Budget:	\$70.5 Billion (+\$4.8B, 7.4%)

As part of the appropriations discussion, some of the participants commented on the obstacles that rural communities face in using low income housing tax credit (LIHTC) funding, noting that such funding alone is not enough meet the needs of tribal housing. They noted that this is a strong point to raise when advocating for increased appropriations funding for tribal housing. Tribes also need access to Section 8 housing vouchers in order to meet the housing needs of their communities.

As part of its continued advocacy for tribal housing funding, Mr. Walters remarked that NAIHC will be increasing engagement with the regional housing groups for letter advocacy campaigns. NAIHC will also be increasing coordination with the National Congress of American Indians (NCAI).

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) contained some promising provisions and NAIHC hopes these provisions will provide a strong foundation on which to reauthorize NAHASDA in 2023. NAIHC will focus its effort in 2023 on advocating that Congress draft one single bill reauthorizing NAHASDA, to be passed in both the Senate and House, instead of each chamber drafting and passing separate

bills. NAIHC has already met with multiple SCIA Majority/Minority Congressmembers, as well as with the Republican Financial Services Committee Chairman Patrick McHenry (R-NC).

Mr. Walters commented on the difficulty of advocating for increased NAHASDA funding when NAHASDA has not been reauthorized. He also noted that this is a useful talking point for advocating for the reauthorization. Mr. Walters noted that because Congress has not yet introduced a NAHASDA reauthorization bill this year, advocates can support the reauthorization by mentioning the Senate NAHASDA bill introduced in 2021 and noting that tribes support that Senate bill. He also noted that advocates can encourage Senators and Representatives to co-sponsor a single NAHASDA bill in 2023. Senators Brian Schatz and Lisa Murkowski (R-AK) are the leaders on the NAHASDA bill and NAIHC is continuing to work with them to introduce a new NAHASDA reauthorization bill.

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, introduced in 2022, 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 re-lend under this program and would have appropriated \$1 million annually for technical assistance to Native CDFIs. Last year, advocates in both the House and Senate indicated they intend to include the NARHI Act in the upcoming farm bill (an omnibus, multiyear package of legislation that governs a variety of agricultural and food programs). Representative Tom Cole, 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-Veterans Affairs Supportive Housing (HUD-VASH) Program. The Tribal HUD-VASH program, introduced in 2022, aimed to codify a tribal housing initiative between the U.S. Department of Veterans Affairs (VA) and HUD. This program pairs recipients of 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. The bill was supported by Senators Jon Tester (D-MT) and Jerry Moran (R-KS), and Congressmembers Mike Bost (R-IL) and Mark Takano (D-CA).

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 Tester. 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.

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 NADL Act's 2022 bill would have provided funding for Native CDFIs to expand outreach for the program to increase veteran participation. Additionally, the bill would have adopted the re-lending 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. 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 and Senators Debbie Stabenow (D-MI), John Boozman (R-AR), Glenn Thompson (R-PA), and David Scott (D-GA) to address these concerns and advocate that the bill be passed.

d. HUD programs

HUD's Office of Native American Programs (ONAP) recently published the FY 2023 IHBG Formula Allocations, available [here](#). ONAP also released a [Dear Tribal Leader Letter](#) (DTLL), in which ONAP announced that the total IHBG appropriation for FY 2023 is \$787 million. Tribes and Tribally Designated Housing Entities (TDHEs) must review their data on the FY 2023 IHBG Allocation and Formula Data Sheets and report any changes to the IHBG Formula Customer Service Center. Additionally, Census challenges to FY 2024 IHBG Needs data must be submitted no later than **March 30, 2023** for consideration in relation to the FY 2024 IHBG formula allocation estimates. Additional information and forms can be found [here](#).

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 TDHEs 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 into February. The deadline for public comments is **March 17, 2023** and comments may be submitted at <https://www.regulations.gov/>. More information on the tribal consultations can be found [here](#).

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 consultations before issuing a final rule.

Participants on the call discussed how the current Housing Counseling requirements place great burdens on tribes. The participants also remarked on how critical it is that HUD revise the housing counseling requirements to fit tribal cultures and capacities, and tribal sovereignty.

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. 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 very 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 TDHEs that wished to receive HAF funding were required to submit a Notice of Request for HAF funding by December 15, 2021. As of March 6, 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

3. NAIHC Legislative Committee Meetings and Future Conferences

The NAIHC Legislative Committee meetings will continue to be held on the first Thursday of each month via 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 before each call. Additionally, NAIHC will also be holding its Annual Convention on May 8–11, 2023 in Waikoloa, Hawaii. Registration is now open for the Annual Convention.

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 or 503-242-1745) or Cari Baermann (cbaermann@hobbsstrauss.com or 503-242-1745).