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## MEMORANDUM

April 17, 2023

To: TRIBAL HOUSING CLIENTS

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

Re: ***HUD TIAC Meeting***

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On April 12–13, 2023, the United States Department of Housing and Urban Development (HUD) held its first in person Tribal Intergovernmental Advisory Committee (“TIAC” or “Committee”) meeting in Washington, D.C. The TIAC met by telephonic conference a couple of times prior to this first in person meeting to establish and draft a Charter and Protocols to govern the TIAC. A copy of the Charter and Protocols are attached to this memo. The list of the Tribal Representatives (“Tribal Representatives”) and HUD representatives can be found [here](#). Below is a summary of the Committee meeting.

### **I. Day One of the TIAC Meeting**

Marcia Fudge, HUD Secretary, Heidi Frechette, HUD Office of Native American Programs (ONAP) Deputy Assistant Secretary, and Jacqueline Pata, TIAC Co-Chair and First Vice President of the Central Council of Tlingit and Haida Indian Tribes of Alaska, gave opening remarks.

#### **A. Round Table Discussion**

The Committee began with a discussion of the critical housing needs in Indian Country. The Tribal Representatives spoke of the numerous housing issues that tribes face, including overcrowding, shortages of affordable housing, and substandard housing conditions. They emphasized that tribes need greater flexibility to use funding in a manner that allows tribes to fit programs to the needs of their particular communities.

The Tribal Representatives spoke of the need for improved infrastructure and asked HUD to increase its efforts to identify new funding streams and resources to help tribes utilize new technology. HUD is working with other agencies to help tribes access funding for energy and infrastructure. For example, the U.S. Department of Energy has new programs that will allow individuals, tribes, and Tribally Designated Housing Entities (TDHEs) to obtain rebates for sustainable energy resources. The TIAC also spoke about the need for housing for doctors and

nurses. Providing housing for health care providers is often not possible because of tribal housing shortages, and this lack of housing deters doctors and nurses from providing critically needed health care to tribal communities. Secretary Fudge responded that HUD has resources, in conjunction with the U.S. Department of Health and Human Services (HHS), that tribes can use to provide housing for health care providers. She encouraged tribes to contact HHS and Deputy Assistant Secretary Frechette to access and utilize these resources.

Secretary Fudge remarked that while HUD is limited by the funding it receives from Congress, it is considering other ways to help tribal housing. This includes finding ways to build homes faster, removing barriers to obtaining mortgages, and finding alternative ways for tribes to address homelessness. She also noted that HUD can be the voice for tribal housing by connecting tribes and TDHEs with other federal agencies to leverage other federal resources.

## **B. Administrative issues**

The Committee discussed and adopted the TIAC Charter and the Protocols. Jad Atallah, ONAP Director of Performance and Planning, noted that HUD is hiring a coordinator for the TIAC and will post the position description in the next week.

After a discussion on the issue, the Committee decided to keep the current TIAC provisions setting the terms for TIAC co-chairs for a certain period of time, instead of having new co-chairs for each meeting. The Committee also agreed on the Protocol provisions allowing for simple majority voting for electing tribal co-chairs. Further, the Committee decided that the Protocols will be revised so that, when a super majority vote is taken in the absence of consensus, the Tribal Co-Chairs shall (instead of “may”) request that any majority and minority positions taken by Tribal Representatives be documented and included in any recommendation made to the Secretary to ensure that all views of Tribal Representatives are reflected. The Committee also moved for Jacqueline Pata and Tyler Yellow Boy to continue as TIAC Co-Chairs.

## **C. Indian Housing Issues**

Dominique Blom, General Deputy Assistant Secretary of the HUD Office of Public and Indian Housing (PIH), gave remarks on Indian housing issues, including climate issues, housing shortages, drug and alcohol abuse issues, and the need for more homeownership opportunities.

The Tribal Representatives emphasized the need for HUD and other federal agencies to respect tribal governments by not requiring tribal governments and TDHEs to sign significantly more documents for housing actions than are required for state governments. Requiring this implies that tribal governments are not trustworthy.

The Tribal Representatives also spoke of the need for increases in housing funding for tribal communities and the need for the Native American Housing Assistance and Self Determination Act (NAHASDA) to be reauthorized. They noted that funding for Indian housing remained flat for years after NAHASDA was passed in 1996, and that the small increases in NAHASDA funding since then have not kept pace with inflation. Additionally, they noted that funding for Indian housing programs has not increased at the same pace as the overall HUD budget

and currently represents only a small fraction of that budget. The Tribal Representatives recognized that Congress, not HUD, is the entity that appropriates funding for housing, but they asked HUD to advocate on behalf of tribes by emphasizing the critical need for tribal housing programs.

HUD representatives noted that the main reason the HUD budget has increased substantially is the Section 8 housing voucher program (“Section 8 Program”). Congress supports the Section 8 Program’s benefits to low income families and is therefore willing to appropriate money for it to compensate for inflation. In contrast, the actual benefits of the Indian Housing Block Grant (IHBG) program are more difficult to track, and HUD therefore has a more difficult time demonstrating that the IHBG program is a successful way to help low income families. HUD representatives noted that if there were a better way to track what IHBG amounts tribes are using for rental assistance, HUD could use that data to argue for more funding for the IHBG program.

The Tribal Representatives noted that tribes do submit reports on rental assistance programs and low-income housing tax credit (LIHTC) programs. However, HUD representatives remarked that one of the challenges is that the reports do not give a full picture of all that tribes and TDHEs are doing for tribal members. HUD needs additional data to show not only how many tribal members are being served through rental assistance, but also what the unmet rental assistance need is. Having such data would allow HUD to advocate that the Section 8 Program inflation factor should also be applied to IHBG funding for increased appropriations.

The Committee further discussed the IHBG competitive grant, noting that the competitive nature of the grant hinders tribes by forcing them to compete with each other. Other Tribal Representatives remarked that they recognize that the IHBG competitive grant scoring systems are required for federal grants and are outside of HUD’s control to change. However, the scoring systems often do not accurately reflect the needs of tribal communities. Additionally, grant criteria does not reflect the diverse obstacles that tribes face. The Tribal Representatives therefore asked HUD to consider how to better align the criteria to reflect the needs and obstacles specific to each tribe.

HUD representatives responded that they have heard tribal comments that the grant criteria must be revised to more easily illustrate why they need IHBG funding. They noted that HUD specifically provides grants to tribes that have not been funded before and awards are generally evenly split between large and small tribes. However, they noted that even with simplified criteria, HUD has insufficient funds to award all grants. HUD representatives remarked that HUD will continue to hold tribal consultations each year on the notice of funding opportunity (NOFO) for the IHBG competitive grant process in order to improve the scoring system.

The Tribal Representatives commented that the IHBG grant application process is onerous and costly for tribes. Tribes often have to hire grant writers in order to successfully compete for funding. Hiring grant writers detracts from the funding tribes can use to meet actual housing needs. The Tribal Representatives also remarked that tribes are deterred from applying for funding because of the onerous grant reporting requirements, particularly rural tribes with limited internet access. The Tribal Representatives asked that HUD consider how to streamline and improve the IHBG competitive grant process and reporting requirements. Further, they commented that tribes

and TDHEs need more funding to cover the costs of administering all of the grant programs and funding sources.

Additionally, the Committee discussed the obstacles that tribes facing because of not being able to use IHBG competitive grant funding for new construction unless the tribe or TDHEs is a Community-Based Development Organization (CBDO). HUD representatives responded that HUD has requested a fix to this CBDO issue in the HUD proposal for the President's 2024 budget request.

#### **D. Homeownership Discussion**

Julia Gordan, HUD Assistant Secretary for Housing and Federal Housing Commissioner, provided an overview of homeownership issues. She noted that the HUD Office of Housing Counseling (OHC) handles multifamily rental programs, single-family mortgages, and homeowner counseling. The HUD Federal Housing Administration (FHA) insures mortgages but does not issue mortgages directly. The insured mortgages are packaged by lenders who then participate in the Ginnie Mae program. The Ginnie Mae program serves historically underserved groups by providing full faith and credit guaranties on securities. The guaranties apply to PIH and U.S. Department of Agriculture loans. HUD representatives asked tribes to provide feedback on how the Ginnie Mae Program can increase the number of lenders providing loans in Indian Country.

##### *1. Housing counseling*

On January 26, 2023, HUD published the Housing Counseling Proposed Rule outlining housing counselor certification requirements for housing counseling conducted in connection with the IHBG and Indian Community Development Block Grant (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 counseling services. Most tribes, TDHEs, and tribal entities are currently ineligible to become HUD-approved housing counseling agencies and therefore are generally ineligible to receive HUD housing counseling grants. NAHASDA reauthorization bills have included provisions allowing tribes to apply for grants for housing counseling.

The Committee discussed the barriers that tribes face due to these housing counseling requirements and asked that HUD provide more training and technical assistance (TTA) on the proposed housing counseling requirements. Tribal Representatives emphasized that tribes will need additional time to implement any new requirements. The Tribal Representatives also asked that HUD keep tribal self-determination in mind as it implements any new requirements.

##### *2. Appraisals*

One of the Committee discussions involved the barriers that tribes face in obtaining fair appraisals for homeownership programs, particularly in rural areas where tribes face high costs for flying in an appraiser. The HUD representatives commented that the entire housing industry is

considering alternatives to the traditional appraisal system. HUD itself is considering ways to make appraisals less costly and more equitable, including efforts to increase the number and diversity of appraisers available.

HUD has been successful in addressing appraisal equity issues through the HUD complaint process. HUD representatives encouraged tribes to utilize this process to redress such issues. This includes addressing situations where tribal properties are under-appraised because of discrimination. The HUD Office of Fair Housing in particular is seeking tribal feedback on issues that impact tribes, including mortgage lending processes and accessibility standards.

### *3. Section 184 loans*

The TIAC held an involved discussion of the Section 184 Program (“Section 184”), through which Native Americans can obtain a mortgage. Tribal Representatives discussed the barriers created by the Section 184 eligibility requirements. They asked that HUD address the obstacle caused by the requirement that tribes must demonstrate they have a historical tie to an area in order for a tribal member to obtain a loan there. The HUD representatives responded that the historical ties requirement can only be addressed through new legislative initiatives. However, on April 13, 2023, HUD issued a [Dear Lender Letter](#) expanding the geographic program areas in which tribal members can obtain a Section 184 loan. Interested parties have 30 calendar days from April 13, 2023 to submit comments to the Office of Loan Guarantee at [Section184Comments@hud.gov](mailto:Section184Comments@hud.gov).

The TIAC also commented on the delays tribes face in obtaining title search reports (TSR) through the Bureau of Indian Affairs (BIA), noting how this delay can cause problems in meeting lenders’ deadlines for Section 184 loans. The HUD representatives noted that tribes can obtain a waiver of additional time for the BIA to process TSRs. Additionally, HUD is aware of this issue and is working with the BIA to speed up the process.

### *4. Other Topics*

The TIAC held a discussion on the delays, hurdles, and high costs that tribes face in meeting ineffective federal procurement and contract requirements. Tribal Representatives recommended that HUD should research the costs to build houses with federal funding compared to non-federal funding. HUD representatives responded that HUD will conduct such research.

On January 19, 2023, HUD issued new guidance on the micropurchase and IHBG de minimis thresholds for procurement requirements for NAHASDA-funded programs. The de minimis threshold is set at \$5,000, and per the new HUD guidance, the micropurchase threshold is set at \$10,000, but tribes can raise it to \$50,000 by doing a self-certification. The technical advisor to one of the Tribal Representatives requested that HUD consider exercising its discretion to raise the IHBG de minimis threshold to match the micropurchase threshold. The technical advisor also requested that HUD issue new guidance to clarify the various procurement threshold requirements. One of the additional threshold requirements is set by the Davis Bacon Act (40 U.S.C. 3141 et seq.), requiring all federally funded construction, alteration, or repair contracts over \$2,000 to comply with the Davis Bacon Act’s prevailing wage requirements.

HUD representatives responded that HUD recognizes the issues that the Davis Bacon Act's \$2000 threshold creates for all federal construction projects. They mentioned that the U.S. Department of Labor (DOL) released a notice a few years ago asking for comments on this threshold but did not change it. However, the HUD Office of Field Policy and Management (FPM) recently entered into an MOU with the DOL regarding the Davis Bacon threshold. The FPM will be pressing DOL to increase this \$2,000 threshold. HUD will also be communicating the issues the Tribal Representatives raised to DOL to convince DOL to increase the threshold.

Finally, the TIAC discussed challenges in connecting tribal housing to clean water and sewer systems, and the obstacles in obtaining grants from the Indian Health Service (IHS). The Tribal Representatives asked that HUD communicate with IHS to advocate for tribes on this issue. Adrienne Todman, HUD Deputy Secretary, remarked that HUD will work harder to advise IHS on how to work better with tribes.

### 5. Closing

Deputy Secretary Todman gave closing remarks and noted that HUD recognizes that many of the current HUD regulations and policies do not fit Indian Country. She noted that HUD is committed to working with tribes to adapt regulations and policies to better fit tribal communities. HUD encouraged tribes to send HUD specific details on how the various HUD and ONAP programs can be improved.

## II. Day Two of the TIAC Meeting

Jenn Jones, HUD Chief of Staff, gave opening remarks.

### A. Homelessness and Environmental Issues

Marion McFadden, HUD Principal Deputy Assistant Secretary for Community Planning and Development, gave an overview of the Community Planning and Development Office (CPDO), which handles homelessness issues and environmental reviews. The CPDO is continuing to work to incorporate tribes into the continuum of care program (CoC), create tribal-specific resources, and create a tribal-specific network to discuss CoCs. The Tribal Representatives asked for a statutory fix so that tribes do not have to make statements of consistency when forming a CoC.

The CPDO has funding to address the worst disasters but does not have annually appropriated disaster relief funding. The CDPO continues to ask Congress to include tribes in the funding. However, absent statutory language that would allow tribes to limit support to only tribal members, they must serve all individuals.

Tribal Representatives commented that homelessness looks different in Indian Country, with homeless individuals often staying with their families. Homelessness in Indian Country therefore also results in overcrowding, rather than people living on the street. As a result, the term "unsheltered individuals" fits better than "homelessness." They remarked on the importance of

HUD homeless programs having definitions broad enough to encompass the types of “unsheltered individuals” or “homelessness” that appear in Indian Country.

Tribal Representatives noted that many tribes face barriers to joining state CoCs because of state discriminatory practices. Tribal Representatives asked whether HUD can penalize or not fund states that are discriminating against tribes in the allocation or use of funding. HUD representatives stated that they will consider what they can do, such as taking an action under the Fair Housing Act.

Another issue tribes have with joining or starting a CoC is the burden of administering the CoC without receiving additional funding to cover administrative costs. Additionally, it can be difficult for multiple tribes to form a CoC because tribes are all sovereign nations with their own cultures and perspectives. The Tribal Representatives remarked that it is important that HUD not try to force all tribes into one CoC on the mistaken assumption that all tribes are the same. Tribal Representatives further noted that the process of applying for a CoC is tedious and costly for tribes. They asked whether there is funding for grant writers to help tribes apply. HUD representatives noted that there is technical assistance available to help tribes, which should allow tribes to avoid needing grant writers.

Tribal Representatives also noted that they have limited funding with which to address homelessness and asked whether there is any additional funding available for such efforts. The HUD representatives responded that there are currently only a few funding programs available, two of which are CoC funding and the HUD Youth Homelessness Demonstration Program (YHDP). The YHDP is flexible in terms of how communities can use it. Communities in rural areas are more likely to receive funding. HUD representatives remarked that Congress has continually funded the YHDP and likely will continue to fund it. On April 13, 2023, HUD posted a [NOFO](#) for the FY 2023 YHDP, with \$60 million in funding available. The deadline to apply is **June 27, 2023**.

The TIAC also discussed how mental health issues need to be addressed as part of efforts to address homelessness. Providing mental health services is an eligible activity for CoC funding.

### *1. Environmental reviews and issues*

One of the Tribal Representatives asked whether there is any funding available for the environmental review process. They noted that completing the environmental review process takes time and costs the tribes significant money. HUD responded that the costs can be charged to the grant for that respective project but that there is no additional pot of funding for that review.

On February 13, 2023, HUD published a [notice in the Federal Register on Addressing Radon in Environmental Review Process](#). The notice invites interested persons to submit comments on the proposed HUD Departmental Radon Policy, which includes a proposed clarification that radon, as a radioactive substance, must be considered in the environmental review of proposed HUD-assisted projects. HUD representatives noted that the policy change would not require radon testing. Instead, it will propose solutions for how to handle radon testing if it is not already available for an area.

The Tribal Representatives highlighted the issues that the HUD Radon policy change will cause for tribal communities. They noted that radon testing requirements would be an unfunded mandate and would greatly reduce a tribe's abilities to rehabilitate housing. The Tribal Representatives also emphasized that HUD should not take a one-size-fits-all approach, because radon is not an issue for all tribes.

## 2. Manufactured housing

HUD representatives commented that Congress has become aware of the need for funding to address manufactured housing issues. HUD will therefore be issuing a NOFO later this year for a grant to address manufactured housing issues. HUD has not yet determined whether there will be a tribal set aside. The NOFO will identify the eligible activities, but it is up to communities to decide how to use that funding, including for constructing new manufactured housing. Tribal Representatives emphasized the importance of including TDHEs as eligible entities in the NOFO.

## B. Technical Assistance and Research Priorities

Solomon Greene, Principal Deputy Assistant Secretary for the HUD Office of Policy Development and Research (PD&R) and Todd Richardson, General Deputy Assistant Secretary of PD&R, gave an overview of HUD research priorities and TTA as they relate to tribal communities.

## 3. Research Priorities

HUD representatives remarked that conducting studies creates national talking points that HUD and tribes can use to advocate to Congress on the need for increased funding for specific Indian housing needs. They encouraged tribes to assist HUD in conducting research studies to explore housing issues facing Indian Country. HUD reports and studies are available online at [HUDuser.gov](https://www.huduser.gov).

HUD is in the process of developing its published FY 2023 Learning Agenda and encouraged tribes to submit comments on the tribal topics and data that HUD should research. Additional information be found [here](#). The Tribal Representatives responded that it is important that tribes be included in any research decision boards, and that HUD respect tribal culturally and historically sensitive issues. They recommended that HUD conduct research on the factors that have led to disparities and inequities between tribes and other people as it relates to allocations and uses of funding.

The TIAC discussed ways in which the pandemic affected the census, noting that it caused severe undercounts in tribal communities. Some of the factors that continue to result in severe undercounts are rural tribes' lack of access to online census methods and the limited number of census field representatives who visit tribes. HUD responded that it is aware of the undercount in tribal areas and will consider methods to avoid undercounts for future censuses.

HUD representatives remarked that if a tribe successfully challenges census data, HUD will then use tribal data instead of the census data. They noted that having tribal data on enrolled



members would allow HUD to compare it to the census data to make sure it is accurate. However, Tribal Representatives remarked that tribes are often reluctant to give such data to HUD. They recommended that tribes should be the entities that collect that data, rather than a third party. Tribes are leery of providing data to third parties because of prior experiences with third parties misusing that data. Additionally, they emphasized that tribes are sovereign nations with different cultures and HUD should not treat tribes as all being the same. They therefore recommended that HUD provide an individualized questionnaire for each tribe on what data HUD needs.

The TIAC also discussed why it is the responsibility of tribes to challenge the census data, rather than the responsibility of HUD. HUD representatives remarked that HUD does the best it can to gather accurate census data, but tribes know their communities better than HUD. Challenging census data is therefore an opportunity for tribes to inform HUD, rather than a responsibility. Other Tribal Representatives noted that tribal census challenges were created under NAHASDA as a way to allow tribes to provide data to the federal government through methods with which they were comfortable and that would protect tribal members.

#### 4. Training and Technical Assistance (TTA)

HUD representatives noted that TTA is driven by demand, so HUD will create and provide TTA in response to what tribes identify they need. HUD receives \$7 million each year for TTA. HUD is continuing to expand the pool of third party TTA providers, such as the National American Indian Housing Council (NAIHC), through which HUD can provide TTA. HUD welcomes tribal input on how to increase the pool of TTA providers. Tribal Representatives noted that they would like to see HUD relinquish control of TTA to tribal organizations like NAIHC. They noted that one of the reasons for this is that the TTA provided by third party providers is often misaligned with tribal needs. HUD representatives noted this concern and will consider how to address it.

The TIAC also discussed HUD's efforts to provide training to TTA providers and improve the pool of TTA providers. HUD representatives encouraged tribes to comment on the root issues that cause tribes to have difficulties accessing TTA.

### **C. Other Issues from HUD Leadership**

Michele Perez, Assistant Deputy Secretary of the FPM, and other HUD representatives addressed a variety of other HUD priorities for tribes. The HUD representatives noted that FPM regional administrators go out to tribal communities to hear tribal feedback and see firsthand the housing challenges that tribes face. HUD representatives discussed a number of initiatives that FPM is taking to specifically help tribes. One such initiative is working with the U.S. Department of Transportation on a local hire initiative for construction, which includes funding for pre-apprenticeships and training to increasing local hires for construction projects. The Tribal Representatives recommended that the FPM staff work with tribal TERO departments to coordinate wage issues.

The Committee also discussed equity and discrimination issues that tribes face within the housing and construction field. The HUD representatives noted these concerns and mentioned that

FPM is and will continue to focus specifically on those issues. FPM will also increase consultations and communications with tribes on these equity issues.

#### **D. Voting and TIAC Next Steps**

During the afternoon session, the Tribal Representatives deliberated on internal TIAC issues, including subcommittees and next steps. The Tribal Representatives submitted their recommendations for the next TIAC meeting. The TIAC will determine the location at a later date. The Tribal Representatives decided to hold monthly informal subcommittee meetings. Additionally, the HUD TIAC website will soon be up and running and will include details on TIAC actions.

The Tribal Representatives agreed to create two subcommittees, one on congressional relations and the other on infrastructure. The congressional relations subcommittee will focus on developing recommendations on legislative issues such as CoCs, Section 184 changes, and housing counseling requirements. The subcommittee could also draft a briefing document on legislative issues. Lee Spoonhunter, Council Member of the Northern Arapaho Tribe of Wyoming, and Tina Glory-Jordan, Secretary of State of the Cherokee Nation volunteered to co-chair the congressional relations subcommittee. Subcommittee members will include Jordan Rahn, Council Member of the Rosebud Sioux Tribe; Teri Nutter, Elected Official of Gulkana Village; Arch Super, Council Member of the Karuk Tribe; Glenn Ellis, Jr., Council Member of the Makah Indian Tribe, Chief Gary Batton of the Choctaw Nation of Oklahoma; Jacqueline Pata; and Denise Harvey, Council Member of the Confederated Tribes of Grand Ronde.

The infrastructure subcommittee will focus on the need for infrastructure as it relates to housing and on finding infrastructure resources available to tribal housing programs. Victoria Hobbs, Legislative Council Representative of the Tohono O'odham Nation, and Marshall Pierite, Chairman of the Tunica-Biloxi Tribe of Louisiana, will co-chair the subcommittee. Subcommittee members will include Council Member Yellow Boy; Elected Official Nutter; Bridgett Sorenson, Board of Directors of Sault Ste. Marie Tribe of Chippewa Indians; Council Member Ellis; Council Member Rahn; Secretary of State Glory-Jordan; and Darren Brinegar, Tribal Legislator of the Ho-Chunk Nation.

#### ***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 Cari Baermann ([cbaermann@hobbsstrauss.com](mailto:cbaermann@hobbsstrauss.com)); both may be reached by phone at 503-242-1745.