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MEMORANDUM

March 18, 2023

TO: TRIBAL HOUSING CLIENTS

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

RE: ***NAIHC Legislative Committee Meeting and Annual Convention***

This memorandum provides a synthesis of information presented during the National American Indian Housing Council (“NAIHC”) Annual Convention held on May 8–12, 2023. Below is a summary of the Legislative Committee meeting, the plenary sessions, some of the key presentations, and other developments in housing matters.

I. NAIHC Legislative Committee Meeting

Tony Walters, who is now the outgoing NAIHC Executive Director, facilitated the Legislative Committee Meeting and made a presentation. He also introduced Chelsea Fish, the new NAIHC Executive Director.

a. Legislative Update

The 118th Congress is continuing to slowly draft and introduce legislation and hold meetings with constituents and interested parties. Congress and the Biden Administration remain caught up in negotiating the debt ceiling issue. The House recently passed a debt ceiling increase but with spending cuts. However, this is unlikely to pass in the Senate. The U.S. government could potentially default on its \$31 trillion-plus debt in the next two weeks. Any deal to resolve the debt ceiling issue will likely lead to cuts in tribal housing funding.

The United States Senate Committee on Indian Affairs (“SCIA”) held 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

On March 9, 2023, the Biden Administration released its \$6.9 trillion Fiscal Year (“FY”) 2024 budget, the first step in the appropriations process. The budget requests \$1 billion for tribal housing, including \$820 million for Indian Housing Block Grants (“IHBG”), \$150 million for IHBG Competitive grants, \$70 million for Indian Community Development Block Grants (“ICDBG”), \$7 million for training and technical assistance, and \$1 million for Title VI loan guarantees. NAIHC is continuing to advocate that increased funding be allocated to tribal housing this year. Below is a breakdown of the FY 2024 President’s budget compared to past appropriations and NAIHC’s recommendations.

Programs	Fiscal Year 2022	Fiscal Year 2023	Fiscal Year 2024 President’s Budget Request	NAIHC Recommendation
Indian Housing Block Grants	\$772 million	\$787 million	\$820 million	\$1.642 billion, no less than \$1.111 billion
Competitive IHBG	\$150 million	\$150 million	\$150 million	*combined above
T&TA grants	\$7 million	\$7 million	\$7 million	\$7 million
Indian Community Development Block Grant	\$72.1 million	\$75 million	\$75 million	\$100 million
Title VI Loan Guarantee	\$1 million	\$1 million	\$1 million	\$1 million
Section 184 Loan Guarantee	\$3.5 million	\$5.5 million	\$906 thousand**	\$10 million
Native Hawaiian Housing Block Grant	\$22.3 million	\$22.3 million	\$22.3 million	\$20 million
Tribal HUD-VASH	\$5 million	\$7.5 million	\$5 million	\$7.5 million
HIP	\$11.7 million	\$12.2 million	\$18 million	\$23 million
Rural Development 502 Single Family Direct Loan	\$1.25 billion *general program, not tribal specific	\$1.25 billion +\$10 million for Native CDFI Re-lending Pilot	\$1.5 billion +\$17 million for Native CDFI Re-lending Pilot	\$1.5 billion (general) <i>with</i> tribal set-aside

The President’s budget also requested an additional \$5 million for the U.S. Department of Agriculture’s (“USDA”) 502 relending program (“USDA 502 Program”). The USDA 502 Program is a successful pilot program in South Dakota involving the USDA and two Native Community Development Financial Institutions (“CDFIs”)—Four Bands Community Fund on the Cheyenne River Indian Reservation and Mazaska Owecaso Otipi Financial on the Pine Ridge Indian Reservation. The USDA 502 Program provides home loan assistance to rural families with low or modest income to help Native American families obtain home ownership.

Additionally, the U.S. Department of Housing and Urban Development’s (“HUD”) budget request included a proposal to amend the Section 184 authorizing statute to permit HUD to expand

the program service area to all tribal members regardless of where they purchase a home. HUD's budget request also requested allowing new construction with ICDBG funds.

In the spring and summer of 2023, the House and Senate appropriations committees will hold hearings on the budget, 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.

c. Tribal Housing Legislation

Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA"). 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 is continuing to 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.

Senate leaders on both sides of the aisle see the reauthorization as a priority, building off of the momentum last year to attach the NAHASDA bill to the National Defense Authorization Act ("NDAA"). The NAIHC Chair and other board members have already met with SCIA Majority and Minority Congressmembers, as well as with the Republican Financial Services Committee Chairman Patrick McHenry (R-NC). NAIHC is still working with House Financial Services Committee members, including Chairman McHenry, Representative Warren Davidson (R-OH) and Representative Frank Lucas (R-OK) to determine who the lead speaker will be. NAIHC is focusing on increasing support within the Republican leadership, since they are in the majority. While many Representatives seem to be in support of the NAHASDA reauthorization efforts, the new Congressional leadership and majority has new priorities, such as addressing the debt ceiling and spending cuts.

Because Congress has not yet introduced a NAHASDA reauthorization bill this year, advocates can support the reauthorization by noting that tribes support the Senate NAHASDA bill introduced in 2021. Advocates can encourage Senators and Representatives to co-sponsor a single NAHASDA bill in 2023. Senators 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, re-introduced in 2023 as part of the Rural Housing Service Reform Act of 2023 (S. 1389), would provide \$50 million from the USDA Single Family Home Loan Program to Native Community Development Financial Institutions to provide home loans in tribal communities. It would also expand the USDA 502 Program, a demonstration project currently operating only in South Dakota. In addition, it would authorize an operating grant for Native CDFIs who re-lend under this program and would appropriate \$1 million annually for technical assistance to Native CDFIs. Senator Mike Rounds (R-SD) and Representative Tom Cole, Co-Chair of the Native American Caucus, have been advocating strongly for the bill.

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 paired 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 (5%) 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 2022 bill was supported by Senators Jon Tester (D-MT) and Jerry Moran (R-KS), and Representatives 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. The bill was reported out of committee on February 15, 2023. It currently has four bipartisan cosponsors: Senator Thune, Senator Tina Smith (D-MN), Senator Rounds, 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 of 2023 (S. 185). 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 S. 185 bill addresses some of the issues found in a U.S. Government Accountability Office (“GAO”) [report \(#GAO-22-104627\)](#) on the effectiveness of the NADL program. The bill would also provide funding for Native CDFIs to expand outreach for the program to increase veteran participation. Additionally, the bill would adopt 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. However, Senator Sherrod Brown (D-OH), the Chair of the Senate Committee on Banking, Housing, and Urban Affairs, has expressed some concerns with parts of the bill. NAIHC will be meeting with Senator Brown, Senators Debbie Stabenow (D-MI) and John Boozman (R-AR), and Representatives Glenn Thompson (R-PA) and David Scott (D-GA) to address these concerns and advocate that the bill be passed. The NADL bill was considered by the full Senate at the end of April, but the process stalled before the bill was passed. Sponsors of the bill will try to increase support before bringing it to the Senate floor again. The NAIHC Legislative Committee discussed ways to increase pressure on Congress to pass this bill, including

having veterans and tribes contact their Congressmembers to encourage them to not let politics get in the way of much-needed help for Native Veterans.

Unlocking Native Lands and Opportunities for Commerce and Key Economic Developments Act of 2023 (S.1322) (“UNLOCKED Act”). Senator Schatz, Chairman of the SCIA, and Senator Murkowski, Vice Chairman of the SCIA, introduced the UNLOCKED Act on April 26, 2023. The bill would amend the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (“HEARTH Act”), 25 U.S.C. 415, to authorize all federally recognized tribes to issue leases of up to 99 years and affirm tribal authority to issue rights-of-way. The Unlocked Act is intended to eliminate barriers to tribal infrastructure and economic development projects. Vice Chairman Murkowski stated that “[i]f enacted, Congress will no longer have to pass stand-alone legislation to allow for such long-term leasing as it has done 59 times since 1955 or [force tribes to] wait for BIA to approve rights of way applications.” The SCIA held a hearing on the HEARTH Act on May 3, 2023.

d. HUD programs

HUD’s Office of Native American Programs (“ONAP”) published the FY 2023 IHBG Formula Allocations, available [here](#). ONAP also released a [Dear Tribal Leader Letter](#) 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. Additional information and forms can be found [here](#).

The FY 2023 IHBG competitive funding (\$150 million) and FY 2023 ICDBG funding (\$70 million) will be available soon. Additionally, ICDBG imminent threat funding is still available and HUD encourages tribes and TDHEs to apply.

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. 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.

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.

f. Other Matters

1. 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. NAIHC will continue to hold its Annual Legislative Conference in March of each year.

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

II. NAIHC Plenary Session and Business Meeting

a. Plenary Session

NAIHC held a plenary session on May 9, 2023. NAIHC Chairman Thomas Lozano, Tribal Treasurer of the Enterprise Rancheria, AMERIND Chairman Phil Bush, Derek Valdo, and Enterprise Community Partners Native American Programs Director Tonya Plummer gave opening remarks.

Department of Hawaiian Home Lands ("DHHL") Director Kali Watson gave an overview of the DHHL. He discussed the DHHL homestead efforts to provide residential homes for Native Hawaiians. HUD Deputy Assistant Secretary Heidi Frechette joined the meeting virtually to provide a HUD update, highlighting the newly formed HUD Tribal Intergovernmental Advisory Committee ("TIAC").

Chelsea Fish, the new NAIHC Executive Director, talked about the continuing critical needs of Indian housing. She also emphasized the need to specifically focus on youth as tribes determine how to allocate their limited housing resources.

b. Business Meeting

The NAIHC Business meeting was convened after the plenary session, but they were unable to establish a quorum of 120 members. Chairman Thomas Lozano made some preliminary, welcoming remarks. He also introduced the new NAIHC Executive Director, Chelsea Fish. However, Tony Walters provided the Executive Director's report. Mr. Walters first presented the financial position of NAIHC. Over the past six (6) years, NAIHC's net assets have increased, although they flattened during the COVID pandemic. However, the assets are increasing again as NAIHC is again able to provide in-person conferences, training, and technical assistance. Federal training and technical assistance comprise about half of NAIHC's revenue, and another 20% is from events like the Annual Convention and the Legal Symposium.

In 2022, NAIHC provided 43 regional training courses, 216 on-site technical assistance sessions, and two NAIHC Leadership Institute courses. In 2023, there will be 56 regional training courses, 23 core training courses accessible on-line, 216 more on-site technical assistance sessions, and six (6) in-person NAIHC Leadership Institute courses (several of these will be made available online). NAIHC also facilitated a virtual housing summit with HUD ONAP (April 6-7, 2022). There were 524 participants from around the country. Additionally, NAIHC participated in a national workgroup for safe housing for American Indian/Alaska Native (“AI/AN”) survivors of gender-based domestic violence. Finally, NAIHC developed a new part of its website: [the Tribal Housing Assistance Resource Hub](#). This website is for Native homeowners to find help paying for mortgage, utilities, and rent (it will show tribal, state, and local resources—NAIHC is surveying its members to get information to put on the website).

There was a question raised as to the process for handling resolutions, due to the lack of a quorum. Specifically, the question is whether the resolutions go to the NAIHC Board for consideration and action if there is no quorum. After some deliberation and consultation with the parliamentarian, the Board determined that this was an appropriate procedure, and scheduled a meeting for 11:00 AM on May 10, 2023, to consider the resolutions with input from any members who are interested in participating in the discussion.

The Board meeting on Wednesday took up the ten (10) resolutions originally presented: five (5) from United Native American Housing Association (“UNAHA”), two (2) from Northwest Indian Housing Association (“NWIHA”), two (2) from Alaska housing entities, and one (1) from the DHHL. We describe each resolution and the action taken below.

UNAHA Resolutions

1. *A Resolution Requesting That HUD Establish Regional VASH Voucher Pools.* This resolution recommends to HUD that a pool of at least ten Tribal VASH vouchers be established annually for each ONAP region and that TDHEs (including those with existing Tribal VASH vouchers in place) be allowed to access the vouchers in increments of one to three vouchers a year on a first-come-first-served basis to serve eligible participants living in eligible units. There was brief discussion about the intent of this resolution to call for more Tribal HUD VASH vouchers. The resolution was amended to include the word “expanded.” The Board adopted this resolution unanimously.
2. *A Resolution Requesting That Tribes and TDHEs be Re-Instated in the Housing Choice Voucher (Section 8) Program.* This resolution recommends to Congress that tribes and TDHEs be reinstated as eligible administrators and participants in the Housing Choice Voucher/Section 8 program for housing assistance. The Board adopted this resolution unanimously.
3. *A Resolution Requesting That HUD Remove All Leveraging Requirements from NOFOs for ICDBG and IHBG Competitive Grants.* This resolution recommends to HUD that the newly established TIAC be used as a resource to resolve any other unfair and non-

competitive provisions in current and future Notices of Funding Opportunities (NOFOs). There was substantial debate about whether to include language referring to tribal consultation in addition to, and distinct from, the TIAC. The concern expressed by the proponent of the resolution is that if they add a reference to tribal consultation, it removes TIAC from any useful role in the process, when the whole point of setting up the TIAC was to fill the gaps in the periods between negotiated rulemaking. Adding this layer would slow the process down of getting these kinds of changes incorporated into future NOFOs. The parties who want the amendment noted that the TIAC has only fifteen tribes, and that the TIAC should not take the place of tribal consultation. Various proposals to amend the resolution language were proposed and rejected. The discussion then moved into what the TIAC does and how its agenda is set. The resolution was revised to remove references to consultation and the TIAC. The Board adopted this amended version of the resolution unanimously.

4. *A Resolution Requesting Tribal Consultation on HUD ONAP Proposed Section 184 Loan Handbook.* The resolution states that NAIHC opposes HUD's unilaterally proposed changes to the Section 184 Loan Guarantee Program, including the preparation of a program handbook where most of the program details will be included. The resolution therefore calls on HUD to implement meaningful face-to-face consultation with tribes and TDHEs before, during, and after HUD produces the proposed Section 184 Loan Guarantee Program handbook. The resolution was approved unanimously without debate.
5. *A Resolution Supporting the Re-Authorization of the Native American Housing Assistance and Self-Determination Act (and Restoration of Section 703 T&TA to NAIHC).* The resolution urges Congress to approve and pass the reauthorization of NAHASDA in calendar year 2023. The resolution **also** supports the inclusion of provisions in any authorizing legislation that would direct all Training and Technical Assistance ("T&TA") funds back to NAIHC (currently the T&TA funds are awarded competitively). There was debate about the provisions concerning directing the T&TA funds all back to NAIHC. The Alaska Association of Housing Authorities ("AAHA") receives T&TA funds and would like to keep receiving such funding, because these trainings are specific to issues in Alaska (which NAIHC was not providing). AAHA proposed adding language that the T&TA funds go only to NAIHC "and regional associations of tribal housing providers." The debate then turned to whether NAIHC should get the funding and subcontract to regional housing associations. AAHA wants to get the money directly and not through NAIHC. The proponents argued that the resolution simply points HUD back to the existing statutory language, which requires that the T&TA funding go to a national organization (NAIHC). The debate was contentious. The concern was that putting the funding out to regional associations would undermine NAIHC. The discussion was tabled to the next Board meeting, to allow an attempt to resolve the differences. There was also some general agreement to put together a workgroup to discuss the issue concerning Section 703 of NAHASDA, which authorizes appropriations for T&TA for Native American housing.

NWIHA Resolutions:

6. *Resolution Regarding the Compilation Of NAHASDA-Assisted Units Data.* The resolution requests that HUD ONAP allocate technical assistance funds to collect and compile a report on the number of IHBG-funded units currently under management by tribes and THDEs. The resolution was amended to change the title to “IHBG-Funded Units.” NWIHA explained that the purpose of getting this information would be to advocate to Congress for an additional line of funding for maintenance and operation of these units. The amended resolution passed unanimously.
7. *Resolution Regarding Appropriations for the IHBG.* The resolution requests that the United States Congress increase the IHBG to \$1,642,000,000 under Title I of NAHASDA (25 U.S.C. 4111 et seq.) and increase the Native Hawaiian Housing Block Grant to \$25,000,000. NWIHA withdrew this resolution because it covered some of the same ground as Resolution 8. Resolution 8 was amended to add the specific funding amount from the NWIHA resolution.

Cook Inlet Housing Authority Resolution

8. *Equitable Funding for HUD’s Native American Housing Program.* The resolution urges HUD to request equitable funding increases for Native American housing programs at a level comparable to non-Native American program. The resolution also calls for Congress to adequately fund the IHBG in a manner that is equitable to overall HUD programs and commensurate with critical needs. This resolution was amended to include the specific funding amount of \$1,642,000.00 for FY 2024 from the withdrawn NWIHA Resolution 8. The Board adopted this resolution unanimously.

Tagiugmiullu Nunamiullu Housing Authority Resolution

9. *Resolution Promoting Collaboration Between the U.S. Department of Defense and HUD Through the Innovative Readiness Training Program.* The resolution urges the U.S. Secretary of Defense and the Secretary of HUD, pursuant to the [White House Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#), issued January 26, 2021, to develop and execute an interagency agreement. The resolution also states NAIHC’s intention to expand use of the Innovative Readiness Training (“IRT”) program in American Indian, Alaska Native and Native Hawaiian communities to advance the goals of the FY 2022-2026 HUD Strategic Plan and the National Defense Strategy. The resolution further states NAIHC’s intention to address housing and climate issues in rural areas through the IRT program. The resolution passed unanimously (with one abstention).

Department of Hawaiian Home Lands

10. *Resolution Recognizing the Centennial Celebration of the Hawaiian Homes Commission Act of 1920 as Amended.* The resolution recognizes the Centennial of the Hawaiian Homes Commission Act of 1920, as amended, and acknowledges the similarity of the struggles Native Americans, Alaska Natives, and Native Hawaiians have faced in access to adequate

housing and employment in their own tribal home lands. The resolution passed unanimously.

III. Breakout Sessions

We attended several of the relevant breakout sessions and provide a summary of them below. NAIHC will provide the materials used for each breakout session on its website.

a. Breakout Session: HUD 184 and Skilled Workforce Program

On May 4, 2023, HUD announced that they are lowering the guaranty fee on HUD Section 184 loans from 1.5% to 1%, and they have eliminated the 0.25% annual fee. This change is in recognition of very low default rates. These changes apply to individuals as well as tribal loans, and will result in significant savings.

HUD 184 is a loan guaranty program that provides a 100% guaranty for loans within a tribal area. The guaranty is available to both individual tribal members as well as to tribes and TDHEs. This is not a low-income program: there is no income threshold. While originally set up as a program for loans on trust lands, it has since been expanded to cover both on- and off-reservation lands, and fee and trust lands.

The HUD 184 Skilled Work Force Demonstration Project expands on the existing HUD 184 program to help fill a need for housing for professionals (health care, law enforcement, and other skills) on-reservation. Tribes/TDHEs get to define who counts as a “skilled” worker. HUD will review the policy but it is up to the tribe/TDHE’s discretion. The guaranty fee will be reduced to \$1.00 for skilled workers. While tribes/TDHEs already had the ability to use the Section 184 program to fund construction for skilled/essential workers, this demonstration project creates an additional incentive by essentially waiving the guaranty fee. HUD has allocated \$1.7 million for the program, which should translate into approximately \$12–20 million in loan guaranties. This is (currently) a one-time allocation.

To participate in the Demonstration Project, tribes/TDHEs must: 1) apply to HUD by submitting a description of the proposed development; and 2) subject the housing to a use restriction (for only skilled workers). Skilled workforce tenants are not required to be tribal members. Tenants must meet the skilled worker definition. Use restrictions apply for the life of the loan or ten (10) years, whichever is longer. Tribes/THDEs must maintain records demonstrating that the homes are being used for the appropriate purposes.

b. Breakout Sessions: “Increasing Housing Protections for Survivors of Gender-Based Violence” and “Major Challenges in Accessing Safe/Supportive Housing for Survivors of Gender-Based Violence”

These were two breakout sessions discussing Gender-Based Violence (GBV) in the context of tribal housing, presented by Caroline LaPorte, Director of the STTARS Indigenous Safe Housing Center (“STTARS”). For the first session, Ms. LaPorte went through the elements of the Violence Against Women Act (VAWA) and its amendments that address housing. She noted that most of

the VAWA housing requirements do not apply to tribal housing programs funded with IHBG funding (although certain other funding streams do bring along these VAWA protections). However, she urged tribes to consider these requirements and how they might be configured to fit their circumstances and built into tribal law and policy.

Some of the useful components of VAWA that tribes/TDHEs should consider adopting include the following:

- Authorize bifurcated evictions so that GBV victims can remain in the home while the perpetrator is evicted
- Prohibit evicting a GBV victim for violence or criminal activity in the household if the perpetrator is the party committing the violence or criminal activity
- Allow for emergency transfers for GBV survivors who fear for their health or safety
- Create a low barrier, self-certification process for GBV survivors
- Do not create barriers to eligibility for GBV survivors based on the acts they suffered as GBV survivors
- Consider easing eligibility requirements for GBV survivors around their own criminal history or substance abuse history
- Expand definition of homelessness to include GBV survivors experiencing trauma in their current residence or who have a lack of safety related to fleeing or attempting to flee GBV

Ms. LaPorte also noted that the 2022 VAWA amendments incorporated provisions related to sex trafficking that included survivors of sex trafficking within the VAWA housing protections, and urged tribes/TDHEs to consider doing the same.

Finally, Ms. LaPorte noted that the 2022 VAWA amendments included a requirement that HUD promulgate rules regarding implementation of the 2022 VAWA amendments. As part of that rulemaking process, HUD sent out a “Dear Tribal Leader” letter seeking tribal input on the implementation of “VAWA-like protections” and requested tribal feedback on four (4) questions:

- What are the challenges/barriers to helping survivors of domestic violence, dating violence, sexual assault, and stalking in HUD-assisted Tribal Housing?
- What policies do Tribes and TDHEs already have in place to assist survivors?
- Should HUD consider implementing certain policies that assist and protect survivors who reside in HUD-assisted Tribal housing? If so, what policies would they be? Please note that HUD would conduct extensive Tribal consultation before implementing any such policies.
- Are there resources HUD could provide to help Tribes and TDHEs protect survivors?

In the second session, Ms. LaPorte discussed the intersection between housing insecurity and risk for GBV. The need for safe and affordable housing is one of the most pressing concerns for AI/AN survivors of GBV. Fifty percent (50%) of the homeless population identifies GBV as the primary cause of their homelessness. Yet there are only 50 tribal GBV shelters for 574 federally-recognized tribes. In many instances, non-Indian shelter housing for Indian GBV victims is

problematic, for a variety of reasons including: intrusive and retraumatizing application processes; problematic mindsets about who should have access; unsafe or unsanitary conditions; lack of culturally-rooted accommodations; little or no transitional housing; and spaces that are not safe or trauma-informed. One major theme that STTARS has come across is the lack of support for grandmothers caring for grandchildren, yet this population is overrepresented in the unhoused populations that they have worked with. Survivors also reported that while the spaces they are provided do not feel like a home, home checks were frequent, invasive, disruptive, and retraumatized them. They felt that they were constantly being monitored by neighbors, and that there was a lack of trust regarding survivors by neighbors and by property managers.

The framework that STTARS advocates for includes providing culturally-centered housing, lowering the barriers for people coming out of prison or substance abuse/misuse treatment, and creating safer and sanitary housing. They also advocate for wraparound services to address the multitude of interrelated issues that GBV victims face. Some of the ongoing barriers to safety for Native women are: jurisdiction, invisibility, lack of resources, substance abuse, mental health, prolific exposure to justice issues, objectification, extreme poverty, and law enforcement issues.

STTARS is making the following policy recommendations for tribal councils and for housing programs/TDHEs:

Tribal Councils:

- Increase funding for transportation vouchers
- Increase substance abuse support
- Fund housing projects
- Avoid political interference in application and eviction processes
- Seek out and receive training on GBV
- Commit to hiring practices that sufficiently vet individuals who will have access to vulnerable communities
- Enact GBV-specific codes
- Authorize issuance of protective orders
- STTARS maintains a tribal housing code clearinghouse that Tribes can access as a resource

Housing Programs/TDHEs

- Employ flexibility in requiring application fees and credit charges
- Remove barriers for survivors who have past convictions or substance abuse issues
- Establish preferences for GBV survivors escaping a dangerous situation
- Create policies that support GBV survivor safety and confidentiality
- Seek out training from Native GBV and sexual assault organizations to understand intersection between GBV and homelessness/housing insecurity

c. Breakout Session: Department of Energy—Access to Capital and Tribal Home Energy Rebates.

This session began with a presentation by Dr. Tommy Jones, Deployment Specialist for the Department of Energy (“DOE”), Office of Indian Energy (“OIE”). OIE has fourteen (14) federal employees and ten (10) contractors to serve the entire country. The OIE main office is in D.C., but OIE also has offices in Denver and Anchorage. OIE offers three programs. The first is financial assistance through which OIE makes investments in tribal energy projects, and this usually requires a cost share of 10% (which can include in-kind contributions, such as staff time and equipment). To date (from their inception in 2010) OIE has invested \$120 million in over 210 tribal energy projects. Funds are awarded through a competitive process and OIE funds about one-third of the applications they receive. Some of the projects include new energy development (biomass, solar and wind turbines), battery storage, and back-up power source development. Current OIE funding opportunities include the following: \$50 million for clean energy deployment on tribal lands (deadline was May 16, 2023); \$15 million to support tribal colleges and universities transition to a clean energy future (the notice of intent will be issued soon, with a deadline sometime in July). Dr. Jones suggested that when tribes submit a grant application, they should answer **all** the questions, even if the questions seem redundant. Other important factors that OIE focuses on when reviewing applications includes: community support, tribal governing body resolutions of support, site access, and complete plans.

The second OIE program is technical assistance (“TA”). The goal is to address a specific challenge or fulfill a need that is essential to a current project’s successful implementation. The three areas OIE focuses on with TA is technical analysis, financial analysis, and strategic energy planning. Anyone interested can reach out to the OIE and submit a TA form.

The third OIE program is advocacy and interagency cooperation with tribes. OIE works with the White House and can coordinate across federal agencies. One example of federal agency coordination on which OIE has worked is a memorandum of understanding (“MOU”) among the Navajo Nation, Department of Interior, DOE, and other federal agencies. Additionally, OIE has a Listserv through which individuals can sign up to receive emails updates. More information on the Listserv can be found at this link: energy.gov/indianenergy/contact-us-and-staff. OIE also has a Facebook page and Twitter account through which individuals can sign up to receive updates.

Sabrina Ferguson-Ward, Deputy Director from DOE, State and Community Energy Programs (“SCEP”) presented on the Tribal Home Energy Rebates. SCEP is a new program evolving from the Bipartisan Infrastructure Law and the Inflation Reduction Act. SCEP has \$16 billion in programs. Of this amount, \$225 million is allocated to Indian tribes, available through December 30, 2031. The main goals of the rebates are to help tribal households enjoy lower energy bills; make it easier to access and implement resident energy improvements; attract, train, and retain qualified workforce to provide energy upgrades; and spur durable demand for residential efficiency and electrification. The rebates that are offered are presented at point-of-sale. Rebates must be used for Qualified Electrification Projects such as: electric heat pump HVACs, electric heat pump water heaters, electric stoves, cooktops, ranges or ovens, electric heat pump clothes dryers, electric circuit panel upgrades, insulation, air sealing, and ventilation, and electric wiring upgrades. Funding will go to tribes, which can then delegate authority to TDHEs to implement

the funding. The programs can be designed and implemented to be specific to the community's needs, although the rebate amounts are set by statute. Only 20% of the grant may be used for program administration. No funding allocation formula has yet been developed; OIE is planning to develop this through consultation with tribes. Each tribe will receive an allocation. Funds will be distributed to tribes after they submit an application that is approved by DOE, but the application structure and exact approval process are still under development through consultation with tribes. However, there are some specific statutory requirements for the application, mainly to require a plan to verify income eligibility of those seeking rebates and a plan for how the funds will be used. To access the website with the presentation slides specific to tribes you can go to: <https://www.energy.gov/scep/tribal-home-energy-rebates>. For information on the DOE Home Energy Rebates generally: <https://energy.gov/scep/home-energy-rebate-programs>. Note that tribal households are also eligible for the same rebate funding through the state program in the state where they are located.

d. Breakout Session: Cybersecurity

Aaron Archuleta, AMERIND Systems Administrator, discussed cybersecurity risks facing tribal housing programs, how to prepare and protect tribal housing and personnel, and the importance of conducting a cybersecurity audit.

Mr. Archuleta began with a discussion of the principals of risk and protection. The common vectors of attack are coming through long-term, targeted attacks using advanced techniques like social engineering and custom malware to bypass network defenses. Malware based attacks are infiltrating networks with deceptive emails, websites, or fake software updates. There are also insider threats, involving misuse of authorized access to networks by individuals to steal, sabotage or leak sensitive data. Cyberattacks are also occurring through password attacks and distributed denial of service (overloading a network).

The principals for protection that were originally developed for cybersecurity were the CIA triad: Confidentiality, Integrity, and Availability. "Confidentiality" means ensuring that sensitive data and information are accessible only to authorized individuals or entities, and confidentiality measures are implemented to protect against unauthorized access, disclosure, or theft of data. "Integrity" refers to maintaining the accuracy, consistency, and trustworthiness of data and information, and protecting data from unauthorized users. "Availability" refers to ensuring that data and information are accessible.

The newer model of cyber protection is the "DIE" security model: Distributed, Immutable and Ephemeral. "Distributed" refers to having your data decentralized and computing resources across multiple devices, networks, and locations. This form of distribution avoids having a single point of access or failure. "Immutable" refers to the concept that data is unchangeable once it has been created. This ensures that data cannot be altered or tampered with. "Ephemeral" refers to the concept that data is stored only for a limited for a limited period of time and is automatically deleted once it is no longer needed. This reduces the ability for hackers to access sensitive data.

Auditing your cybersecurity systems is important, as well as understanding "Event IDs" that are identified by your operating system. For example, Microsoft has a set of Event ID trackers, but

you must enable these programs for them to work and identify “events” (i.e., attempts to attack or failures of the system). Thus, it is important to enable your Event ID system and regularly review and understand the types of Event IDs that are occurring. Examples include the following: brute force attacks, attempts to impersonate users to access the system, unauthorized installation or removal of a component or service, creation of a process on your system (i.e., execution of malware program in your system), or unauthorized access to files on the system. Once you know what kinds of events have been occurring, you can consult with information technology (“I.T.”) and cybersecurity resources to address the event.

There is an even newer security model: the “Zero Trust Model”, which assumes that all users, devices, and applications are untrusted until proven otherwise. This approach requires verification for every access request, regardless of whether the user is inside or outside the network perimeter. There are seven tenets of the Zero Trust Model: define the resource to be protected; secure the communications to that source; establish limited access to resources per session; develop a policy defining access to resources; regular monitoring and measuring; consistent enforcement of authentication and authorization requirements; and engage in data collection and regular audits to determine how well the system is working and how it can be improved and evolve, since the threats and modes of attack are always evolving.

Mr. Archuleta also addressed the development of a Disaster Recovery Plan in the event of an attack. Having a disaster recovery plan in place is critical, including having a plan if the security system fails. There should be redundancy built into the system, recovery strategies, recovery plans, and regular testing and training. In addition, you should think through what kind of response you will make to hackers’ demands for ransom.

Finally, Mr. Archuleta outlined the elements for a baseline cybersecurity posture that all organizations should have in place. Those elements are the following:

- Network security (including a robust firewall to restrict access to authorized users)
- User authentication
- Data encryption
- Regular updates to patch known vulnerabilities
- Employee training to raise awareness about cybersecurity risks and vulnerable behaviors
- Incident response plan for quickly responding to and containing cyberattacks
- Continuous monitoring

e. Transitioning LIHTC to Homeownership Generally and Using the 184 Loan

These were two breakout sessions covering low income housing tax credit (“LIHTC”) homeownership conversions. Robin Thorne, Vice President of Training & Asset Management at RTHawk Housing Alliance, LLC, Darkfeather Ancheta, HUD 184 Tribal Outreach at 1st Tribal Lending, and Jason Adams, Owner/Consultant of Ace Housing Development, LLC, gave presentations on how tribes and TDHEs can transition LIHTC rental units to homeownership units.

The federal government issues tax credits through the LIHTC program to state and territorial governments. State housing agencies then award the tax credits to private for-profit and non-profit developers (including tribes and TDHEs) to construct, rehabilitate, or acquire and rehabilitate qualified low-income rental housing. All LIHTC projects must be affordable LIHTC rental units for the first fifteen years. After those fifteen years, the units are eligible for conversion to homeownership. Tribes and TDHEs can also keep them as rental stock. Additionally, the units can be on either trust land or fee land. Rental tenants must initially meet the income qualifications under the LIHTC-defined income limits. Household income may increase over time.

The presenters recommended that tribes and TDHEs consider a number of factors before converting LIHTC units to homeownership units. They also recommended that tribes and TDHEs carefully review their policies to see what the requirements are for both LIHTC programs and homeownership opportunities. Tribes and TDHEs must also review any state requirements for homeownership conversions. Each state may have different criteria. Tribes and TDHEs should also consider each tenant's ability to convert to homeownership and whether or not they are financially stable enough to successfully be homeowners. The presenters also recommended that the unit conveyance documents include restrictive covenants that limit the ability of the homeowner to immediately resell the house after they purchase it.

The presenters also shared details of case studies of TDHEs that successfully converted their LIHTC units to homeownership units, noting best practices for homeownership conversion. One practice is to reward existing tenants for good behavior (e.g. paying rent on time and maintaining the unit in good condition) by giving them a credit that goes towards the cost of purchasing the home. A second best practice is to develop both a homeownership waiting list and detailed policies at the beginning of the project. A third best practice is to provide both orientation about the LIHTC program and about how to successfully be a homeowner. Finally, another good practice is to develop a set of conveyance documents ahead of the fifteen-year conveyance time so that the TDHE is not rushed in developing those documents after the fifteen-year mark.

The presenters also recommended that TDHEs become educated about mortgages and homebuyer training. Having such education will allow TDHE staff to convey the homes more smoothly. The presenters also recommended that TDHEs carefully consider a number of other key issues, such as: how to handle the exit of a limited partner from the LIHTC limited partnership agreement; whether to leave the limited partnership in place or dissolve it and transfer ownership of the units to the tribe/TDHE; whether to include a right of first refusal to allow the TDHEs to purchase a home if the homebuyer wants to sell it; whether to use land leases or subleases between the tribe/TDHE/homebuyer for units on trust land; and how to handle tenants who are not ready to become homeowners.

For units that are ready to be converted to homeownership, loans are available through the HUD Section 184 loan, the VA, the Federal Housing Administration, cash-direct buy options, or through tribal credit programs. Many tribes also provide a down payment assistance to assist the tribal member in purchasing the unit. For the Section 184 loans, either the tribe or the tribal member could take out a Section 184 loan for the purchase. There are no income limits for Section 184 loans and approval is not driven by a credit score. The loans have flexible underwritings, a

one-time 1.5% HUD loan guarantee fee, and a low down payment, currently at 2.25%. The loan terms are for 15–30 years.

f. Implementing HEARTH: Is My Tribe Ready?

In 2012, Congress passed the HEARTH Act to amend the Long-Term Indian Leasing Act, 25 U.S.C. § 415, the statute that serves as the primary authority for leasing tribal lands, subject to the approval by the Secretary of the Interior. The HEARTH Act authorizes any tribe, at its own option, to lease its tribal lands without approval by the Secretary. To take advantage of this option, a tribe must adopt regulations governing the leasing process.

The presenters commented that there are several benefits to obtaining HEARTH Act leasing approval authority, including: 1) eliminating the requirement that the BIA approve land-use permitting on tribal lands; 2) creating a leasing process tailored specifically to tribal needs; 3) implementing a leasing process that will move at a tribally-determined pace rather than depending on BIA officials to take action; 4) allowing a greater measure of self-governance and control over the leasing of tribal lands; and 5) taking advantage of tax prohibitions governed by BIA's leasing regulations at 25 CFR Part 162, which prohibit state and local taxation on permanent improvements, activities, and leasehold and possessory interests on leased tribal lands (e.g., prohibited taxation includes: severance, business use, privilege, public utility, excise, and gross revenue taxes).

However, the presenters noted that it can be challenging to implement the HEARTH Act. It is expensive to implement it, as there is no federal funding available to cover the cost of implementation. Additionally, implementation requires TDHE staff to be well-trained and educated in how the tribal leasing laws work. Tribes should consider the following factors when considering whether to enact a tribal leasing law under the HEARTH Act:

- How long it currently takes the BIA to approve that tribe's leases;
- What the administrative and financial burden on the tribe will be; and
- Whether the tribe has staff members capable of processing, approving, and recording leases.

When developing the leasing law, tribes can use template leasing laws already developed by other tribes. The leasing law must comply with the regulations at 25 CFR 162. The presenters commented that it is important that tribes record all land transactions, including land assignments, leases, mortgages, easements, and rights of way, as recording these land transactions is required by law and protects the tribe/TDHE's interest in the land.

g. Innovative Strategies for Addressing Drug Related Lease Violations

One of the breakout sessions covered strategies to address drug-related lease violations. The presenters first discussed the rapid rise of both drug use and drug-related fatalities across the country and in Indian Country. They also mentioned the high costs associated with addressing drug issues, including the cost of rehabilitating homes contaminated by drugs, the family trauma caused by drug use, and the costs of programs and health care needed to help those addicted to

drugs. The presenters remarked that addressing drug use in housing units through evictions is often ineffective, because those evicted often simply moving into another tribal unit with their family. Many TDHEs are therefore focusing on alternative strategies to address substance abuse, such as partnering with tribal wellness centers.

The presenters shared strategies that tribes and TDHEs can use to address drug use in housing units. Some strategies include doing periodic personal drug testing of tenants (e.g. annually, bi-annually, etc.); allowing tenants to enter drug treatment programs as an alternative to eviction; requiring tenants who were previously evicted for drug use to provide evidence of rehabilitation before being provided with housing again; and conducting regular, periodic home inspections to help TDHE staff determine whether drug use is present in a household. One of the key tasks is to do a baseline test on all TDHE housing units before a tenant moves in so that the TDHE can accurately determine whether that tenant used drugs during their tenancy in the unit. Tribes and TDHEs can also collaborate with law enforcement to identify drug use early on.

All of the strategies and processes that tribes and TDHEs use should be clearly laid out in the housing policies. Additionally, any requirements imposed on tenants, such as requiring mandatory periodic drug testing, should be clearly stated in the rental leases. TDHEs should clearly document and record all drug testing of persons and housing units in each tenant's file. This documentation will be necessary if the TDHE seeks to evict the tenant through an unlawful detainer action in tribal court.

h. Nuts and Bolts of Tribal HUD VASH

The Tribal HUD-VASH program provides rental assistance and supportive services to Native American veterans who are homeless or at risk of homelessness living on or near a reservation or other Indian areas. The Tribal HUD-VASH program recognizes that homelessness looks different in Indian Country. The eligibility requirements therefore allow veterans to qualify if they are living in overcrowded family homes, not just if they are living on the streets. The presenters noted that veterans are ineligible if they are on the Lifetime Sex Offender Registry–Level 3. A tribe's service area for the Tribal HUD-VASH program will be defined by their Indian Housing Plan.

The presenters commented that the Tribal HUD-VASH project-based rental assistance is attached to units owned and operated by the tribe or TDHE. Households are placed on waitlists for the next available unit that meets household composition needs. IHBG funds cannot be used to subsidize the units but the funds can be used to build the units. Rental assistance follows the veteran to the rental unit of their choice that meets the program guidelines. The household has 120 days to locate a unit on or around the reservation. The unit must meet the requirements for family composition and Fair Market Rent for VASH service areas. The tribe or TDHE is required to do a home inspection to ensure that the home meets housing habitability standards.

The presenters also discussed VA case management available to help veterans. Eligible veterans in the Tribal HUD-VASH program must participate in case management and supportive services from the VA. The VA case manager assists the veteran by providing guidance, coordinating multiple services (e.g., mental health services), and connecting the veteran with those

services. The tribe/TDHE, with assistance from HUD ONAP, provides the housing and handles the housing-related services.

i. Understanding the Underwriting Process and Pricing

Randolph Griego, Underwriter II at AMERIND, gave a presentation on the AMERIND underwriting process. Mr. Griego discussed the underwriting process, noting that underwriting is analyzing and accepting insurable risk and determining if the risk is within the guidelines of the company. The underwriting review considers the following: the construction type, the purpose for which the building is being used, what protections are in place (“e.g. sprinklers, alarm systems, fire departments, etc.”), and what exposures pose or reduce the potential for a loss (“e.g. vacant buildings, wooded areas, coastal areas”). The review also considers property values.

Mr. Griego commented that there are a number of factors that drive insurance pricing. These include building limits, deductibles, construction type, location, occupancy purpose, builders’ risk, and loss history. Insurance rates have increased across the industry, based largely on damage caused by climate change (e.g., wildfires), inflation, and high building costs. The presenter noted that housing insurance companies reinsure their insurance policies with secondary insurance companies (“reinsurers”). These reinsurers have driven up their insurance prices, which in turn has increased the AMERIND insurance rates.

j. Freddie Mac’s New Mortgage Product for Supporting Native Homeownership

Simone Beaty, Senior Director of the Freddie Mac Single Family Affordable Lending Strategy and Initiatives (“SFALSI”), Catherine Houlihan, Manager of SFALSI, and David Westfall with Freddie Mac’s Affordable Lending Initiatives discussed Freddie Mac’s new mortgage product for supporting native homeownership.

The presenters gave an overview of Freddie Mac. Freddie Mac was chartered by Congress in 1970 to operate in the secondary mortgage market. Its purpose is to prevent foreclosures, expand credit responsibly, and make homeownership and rental housing more accessible and affordable nationwide. Freddie Mac also provides financial and homebuyer education, housing counseling, and other tools and resources for tribes and housing professionals.

The presenters also gave information on a new Freddie Mac program called HeritageOne, which provides mortgages for AI/AN individuals. Freddie Mac is still in the process of finalizing and rolling out this program. To be eligible for HeritageOne, at least one borrower must be an owner-occupant. Additionally, borrowers must be members of federally recognized tribes to be eligible. The program will provide low down payment solutions for home purchases or refinances. Borrowers can obtain a loan for multiple types of properties, including one- to four-unit properties, condominiums, and units in a planned development. The program also provides flexibilities in obtaining appraisals. The program provides loans on both trust and fee land. The presenters noted that it is still being determined whether the loans will be available outside of a tribe’s service area. Freddie Mac will be publishing a HeritageOne website with more information soon.

The CHOICERenovation program is another program that supports homebuyers and homeowners. It finances renovation costs less than or equal to 75% of the as-completed property value and allows a draw of less than 50% of the costs of materials at closing. It also pairs with Freddie Mac's low down payment mortgages. Additional information on the CHOICERenovation program can be found [here](#).

Anyone interested in more information can contact the Freddie Mac presenters at the following email addresses: Catherine_houlihan@freddiemac.com and David_westfall@freddiemac.com.

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 Cari Baermann (cbaermann@hobbsstrauss.com). Both may also be reached at 503-242-1745.