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## MEMORANDUM

July 6, 2023

TO: TRIBAL HOUSING CLIENTS

FROM:  Ed Clay Goodman & Cari L. Baermann  
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RE: *NAIHC Legislative Committee Meeting*

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This memorandum provides a synthesis of recent developments in housing matters, as well as information presented during the National American Indian Housing Council (NAIHC) Legislative Committee Meeting held on July 6, 2023.

### I. NAIHC Legislative Committee Meeting

Chelsea Fish, NAIHC Executive Director, facilitated the Legislative Committee Meeting.

#### *a. 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.

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.

The 118th Congress is continuing to slowly draft and introduce legislation and hold meetings with constituents and interested parties. The House and Senate are each marking up their FY 2024 appropriations bills at vastly different levels. The Senate is writing their FY 2024 bills according to the limits established in the debt limit deal (and is already looking for ways around those limits), while the House is writing their bills according to roughly FY 2022 levels, while sparing Defense from any budget cuts. This puts them on a collision course for the end of the 2023 fiscal year (Sept. 30, 2023) but most believe there will be a Continuing Resolution (CR) to extend the FY 2023 terms and spending levels into November or December of 2023 when an FY 2024 deal will ultimately be worked out.

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. Tribal Housing Legislation*

***Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).*** Now that the 118<sup>th</sup> Congress is in session, the process for introducing and passing a NAHASDA reauthorization bill has started 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.

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.

On June 13, 2023, Ms. Fish gave testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs on the current state of Native American housing. Ms. Fish articulated

to the panel the rising cost of building homes, the shortage of available homes, and the struggles that tribes face in mortgage financing. Panelists emphasized the importance of reauthorizing NAHASDA, the significant need for additional funding through the IHBG, and highlighted conditions that currently plague tribal communities. NAIHC staff also met with the SCIA to advocate for the NAHASDA reauthorization.

***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 (10) 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 CDFIs 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 reintroduce 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/H.R. 3579).*** The Tribal Trust Land Homeownership Act (TTLHA) 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). Additionally, the bill sets forth requirements for the BIA regarding (1) response times for the completion of certified title status reports, (2) notification of delays in processing, and (3) the form of notices and delivery of certain reports. The TTLHA currently has a number of bipartisan cosponsors: Senator John Thune (R-SD), Senator Tina Smith (D-MN), Senator Rounds, Senator Tester, and Representative Dusty Johnson (R-SD). Notably, the TTLHA would establish timeframes for the realty and land title process. On June 13, 2023, the Committee on Banking, Housing, and Urban Affairs Subcommittee on Housing, Transportation, and Community Development held a hearing to consider the Senate TTLHA bill (S. 70). The House Natural Resources—Subcommittee on Indian and Insular Affairs will consider

the House TTLHA bill on July 12, 2023. One of the participants noted that NAIHC Board Member Sharon Vogel has been called as witness for the TTLHA hearing.

One of the participants on the NAIHC call asked whether the TTLHA would also apply to tribal land that is not trust land. Another participant noted that this TTLHA is just addressing the delays and other issues with the BIA processing of trust land records. It does not have much to do with access to the loan programs for fee lands. The participant also remarked that the average wait times for BIA processing vary region to region but can often take years.

***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.

***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.

*c. 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](#).

HUD has announced estimates for the FY 2024 IHBG Formula Allocation. HUD based the estimated allocation on the President's FY 2024 Budget request of \$820,000,000. These estimates are not the final allotment and are subject to change. More information is available through the [IHBG Estimate Cover Letter](#) and [Formula Response Forms – FY 2024](#)

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.

***Extension of Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Tribal Recipients of HUD Federal Financial Assistance***

The Build America, Buy America Act (BABA) was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58). BABA establishes a domestic content procurement preference (“Buy America Preference,” or BAP) for Federal infrastructure programs. The BABA further requires that no later than 180 days after the date of enactment, HUD must ensure that none of the funds made available for infrastructure projects may be obligated by HUD unless it has taken steps to ensure that the iron, steel, manufactured products, and construction materials used in a project are produced in the United States. A project includes “the construction, alteration, maintenance, or repair of infrastructure in the United States”. The BAP applies to Federal Financial Assistance (FFA) provided to tribes, TDHEs, and other tribal entities (collectively “Tribal Recipients”) involving infrastructure projects.

HUD had previously published a one-year general applicability, public interest waiver (“Waiver”) of the BAP in connection with HUD funding provided to Tribal Recipients, effective May 14, 2022, in order to provide HUD with sufficient time to complete the tribal consultation process. HUD then determined that the prior one-year Waiver period was insufficient to fully consult and assess the impacts that the BAP will have on HUD’s Tribal Recipients. Therefore, on April 7, 2023, HUD published a [notice](#) (“Extension Notice”) proposing an extension to the previously issued Waiver for an additional period of one year (“Final Waiver”) to the BAP as applied to FFA provided to Tribal Recipients. The Final Waiver is effective May 23, 2023, for HUD tribal FFA obligated by HUD on or after the effective date of the Final Waiver. In addition, in the case of FFA obligated by HUD in tribal programs on or after May 14, 2023, but prior to the effective date of the Final Waiver, the Final Waiver applies to all expenditures incurred on or after the effective date of the Final Waiver.

The Extension Notice states that HUD is seeking tribal feedback on when and how to phase in the BAP for FFA provided to Tribal Recipients. HUD will also solicit tribal feedback on other related issues, including how to effectively implement the BAP for extremely remote communities, such as remote Native Alaskan Villages, that are more disconnected from traditional supply chains, have an extremely short construction seasons, are located off the road system, and are reliant on barges to ship construction materials. Tribes and TDHEs can send comments and questions about the Extension Notice, Final Waiver, and BAP requirements to [BuildAmericaBuyAmerica@hud.gov](mailto:BuildAmericaBuyAmerica@hud.gov)

*d. 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.

*e. 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](#).

***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 also be reached at 503-242-1745.