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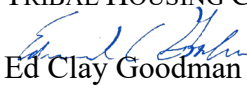
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## MEMORANDUM

September 7, 2023

TO: TRIBAL HOUSING CLIENTS

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

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 September 7, 2023.

### I. NAIHC Legislative Committee Meeting

NAIHC staff member Natasha John, Paul Moorehead, a private lobbyist, and NAIHC Policy and Program Assistant Ryan Edwards 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.

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 118<sup>th</sup> Congress is slowly drafting and introducing legislation. The House and Senate are each marking up their fiscal year (“FY”) 2024 appropriations bills at vastly different levels. The Senate is writing their FY 2024 bills to the limits established in the debt limit deal (and already looking for ways around those limits), while the House is writing their bills to roughly FY 2022 levels, while sparing Defense from any budget cuts.

Because there are very few weeks left until the end of the 2023 fiscal year (September 30, 2023), it is likely that Congress will try to pass a Continuing Resolution (“CR”) to extend FY 2023 terms and spending levels into November or December of 2023 to prevent a government shutdown. Because of the dissension amongst the House Republicans, the Senate is looking for ways to take matters into their own hands and initiate a CR and/or supplemental funding package on their own. It is widely interpreted that spending bills such as these must originate from the House, per the Constitution. The Senate therefore needs a House-originated “vehicle” in order to initiate their own supplemental funding package or CR, and they are actively looking for such a potential bill.

In July 2023, both the Senate and the House released their respective FY 2024 Transportation, Housing and Urban Development, and Related Agencies Bills (“THUD”). The House THUD bill recommends \$1.344 billion for Native American programs, while the Senate version recommends \$1.081 billion. Below is a breakdown of the tribal housing amounts listed in the two THUD versions.

<b>Programs</b>	<b>House THUD</b>	<b>Senate THUD</b>
Indian Housing Block Grants	\$1.110 billion	\$848 million
Competitive IHBG	\$150 million	\$150 million
Training and Technical Assistance Grants	\$7 million	\$7 million
Indian Community Development Block Grant	\$75 million	\$75 million
Title VI Loan Guarantee	\$2 million	\$1 million
Section 184 Loan Guarantee	\$1.5 million	\$10 million
Native Hawaiian Housing Block Grant (NHHBG)	\$22.3 million	\$22.3 million
Tribal HUD Veterans Affairs Supportive Housing (HUD-VASH)	\$5 million	\$7.5 million

*b. Tribal Housing Legislation*

***Native American Housing Assistance and Self-Determination Act of 1996 (“NAHASDA”).***

On July 27, 2023, the Senate approved an amendment, by a vote of 86-11, to the National Defense Authorization Act (“NDAA”) that would reauthorize the NAHASDA. Subsequently, the Senate voted to approve the NDAA with the NAHASDA amendment attached. The amendment language contains updates to a number of items in the NAHASDA statute that are beneficial to Tribes, which we reported on in our memorandum of July 20, 2023. A copy of the Senate NAHASDA amendment can be found [here](#).

Because the NDAA is a “must pass” bill, having the NAHASDA reauthorization attached to the Senate version of the NDAA is very good news. The House has already passed its version of the NDAA, but that version does not contain a NAHASDA reauthorization. The next step will

be a conference between the House and Senate to negotiate a final version of the NDAA, which they will release in a conference report. Whether the NAHASDA amendment remains after the conference is uncertain. The fact that the amendment was passed in the Senate on a strongly bipartisan vote will be very helpful in that process. Tribal advocates will need to keep a close eye on the conference and continue to advocate to leadership in the House and Senate that Congress keep the NAHASDA reauthorization in the NDAA.

One of the participants on the call noted that Senator Mike Rounds (R-SD) has indicated that one of the concerns in the House with NAHASDA is the drug elimination program. The drug elimination program would allow the Secretary to allocate grant funds for reducing drug-related and violent crime in Tribal housing units. The grant may be used to increase security personnel, reimburse law enforcement officers for increased surveillance, security training and anti-drug programs, or to employ one investigator to work with law enforcement. NAIHC recommended that tribal advocates contact their Representatives to advocate for this program.

The NAIHC Chair, other board members, and staff will continue to advocate that the House pass the NDAA with the NAHASDA amendment attached to it. NAIHC is still working with House Financial Services Committee members, including Chairman Patrick McHenry (R-NC), Representative Warren Davidson (R-OH), and Representative Frank Lucas (R-OK) to determine who the lead speaker will be.

One of participants commented that some of the current NAHASDA amendment does not include all of the provisions that tribal housing advocates have been advocating for in the last few years. The participant asked how that would impact tribal advocacy of the Senate NAHASDA amendment. NAIHC staff commented that once a bill passes a Congressional chamber, it is difficult to change it. Attempting to add new provisions to an already passed bill may not be worthwhile because doing so may impeded the chances that the bill would become law.

***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 Rounds and Representative Tom Cole (R-OK), Co-Chair of the Native American Caucus, have been advocating strongly for the bill. On May 1, 2023, it was referred to the Committee on Banking, Housing, and Urban Affairs.

***Tribal HUD-Veterans Affairs Supportive Housing 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/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 July 18, 2023 the Senate TTLHA bill (S. 70) passed the Senate without amendment by unanimous consent.

***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 Brian Schatz (D-HI), Chairman of the Senate Committee on Indian Affairs (“SCIA”), and Senator Lisa Murkowski (R-AK), 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.” Our July 20, 2023 housing memorandum includes a more thorough discussion of the provisions of the UNLOCKED Act. The SCIA held a hearing on the HEARTH Act on May 3, 2023.

c. *HUD programs*

1. ICDBG Regulations Tribal Consultation Comment Deadline Extended to 1/30/2024

HUD is planning to start the rulemaking process to update the Indian Community Development Block Grant (“ICDBG”) program regulations (24 CFR 1003). In accordance with HUD’s Tribal Consultation Policy, the Office of Native American Programs (ONAP) is seeking Tribal feedback on these regulations, which have not been updated in nearly two decades.

HUD is seeking comments regarding all aspects of the ICDBG program and regulations and is particularly interested in receiving feedback on the following areas:

- Eligible and ineligible activities (24 CFR 1003.201);
- Area ONAP allocations of ICDBG funds (24 CFR 1003.101);
- Compliance with the primary objective (24 CFR 1003.208);
- Rating factors included in the Notice of Funding Opportunity (24 CFR 103.303);
- ICDBG Imminent Threat Grants (24 CFR 1003 subpart E); and
- Reporting requirements (24 CFR 1003.506).

Comments can be submitted via email to [consultation@hud.gov](mailto:consultation@hud.gov). Comments must be submitted by **January 30, 2024**. Formal Tribal consultation sessions are forthcoming and will be announced soon.

2. HUD Grants

HUD recently announced \$128 million in FY 2023 IHBG Competitive awards for affordable housing investments in 22 Tribal communities. A full list of the awardees can be found [here](#).

3. HUD Proposed Rule on Certification of Tribal Housing Counselors

As we reported in our July 28, 2023 memo, on December 14, 2016, the HUD Office of Housing Counseling (“OHC”) published a Housing Counseling proposed rule “Proposed Rule, outlining housing counselor certification requirements for housing counseling conducted in connection with the IHBG and the Indian Community Development Block Grant ICDBG programs. The Proposed Rule exempts tribes, TDHEs and tribal entities from compulsory participation in the existing housing counseling program (Subparts B–E of the regulations) unless the entities also provide housing counseling under, or in connection with, other HUD programs (other than IHBG and ICDBG). Instead, the Proposed Rule adds a new Subpart F (24 CFR § 214.600) to the regulations that will establish housing counseling certification requirements specific to tribes, TDHEs, and other tribal entities. On July 27, 2023, HUD held its third virtual Tribal Consultation on the Certification of Tribal Housing Counselors. Information on the Proposed Rule as well as the first two tribal consultation sessions can be found [here](#).

#### 4. HUD ONAP Housing Summit

NAIHC and HUD are hosting the HUD ONAP National Tribal Housing Summit on October 31–November 2, 2023 at the Intercontinental St. Paul Riverfront in St. Paul, Minnesota. The National Housing Summit will provide a forum for training, exchanging ideas, consulting on upcoming issues, and developing best practices for models that implement and sustain effective affordable housing programs under NAHASDA. The theme of the National Summit is “Inspiring Ideas in Indian Housing.” More information can be found [here](#).

#### *d. 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.

NAIHC will be holding its Legal Symposium on October 4–6, 2023 in Las Vegas, Nevada. Registration is now open. Registration and other information on the Legal Symposium 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.