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## MEMORANDUM

January 5, 2024

TO: TRIBAL HOUSING CLIENTS

FROM:  Ed Clay Goodman & Cari L. Baermann  
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RE: ***IHBG and ICDBG Waivers for Presidentially Declared Disasters; NAIHC Legislative Committee Meeting***

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This memorandum provides a synthesis of waivers and flexibilities available for Indian Housing Block Grant (IHBG) and Indian Community Development Block Grant (ICDBG) recipients covered by presidentially declared disasters for 2024–2025, as well as information presented during the National American Indian Housing Council (NAIHC) Legislative Committee Meeting held on January 4, 2024.

### **I. Waivers for Indian Housing Block Grant and Indian Community Development Block Grant Recipients Covered by Presidentially Declared Disasters, 2024–2025**

The U.S. Department of Housing and Urban Development (HUD) recently published a notice ("Notice") outlining existing waivers and flexibilities available to IHBG and ICDBG recipients in areas covered by presidentially declared disasters ("Presidentially Declared Disaster") during calendar years 2024–2025.<sup>1</sup> A Presidentially Declared Disaster "is a major disaster or emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act that activates an array of Federal programs to assist in the response and recovery efforts." Flexibilities Available to Tribal Grantees, 88 Fed. Reg at 87,900. The U.S. President can declare a disaster when a natural or man-made event causes damage that surpasses state, Tribal, and local capacity in order to funnel federal resources to the affected area. In addition, many federal agencies have a series of waivers for disaster-affected grantees that aim to reduce administrative burden and expedite relief and recovery efforts.

The Notice centralizes HUD's existing disaster-related regulatory and administrative waivers for IHBG and ICDBG recipients covered by a Presidentially Declared Disaster during 2024–2025. It also advises that grantees may seek additional waivers and flexibilities not listed in the Notice at any time if the grantee demonstrates that the flexibility is required to assist its relief

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<sup>1</sup> [88 Fed. Reg. 87900.](#)

and recovery efforts. It is important to note that these waivers do not apply to related COVID-19 relief programs administered by HUD;<sup>2</sup> these have a separate waiver process.

*a. Indian Housing Block Grant Waivers and Flexibilities*

In its Notice, HUD outlines three different waivers and flexibilities for IHBG grantees in areas covered by Presidentially Declared Disasters. They will be available throughout 2024 and 2025.

**Total Development Cost.** In general, IHBG regulations<sup>3</sup> require affordable housing offered to low-income beneficiaries to meet a series of design and amenity standards.<sup>4</sup> Total cost development limits establish the maximum amount of funds a recipient may use to develop, acquire, or rehabilitate affordable housing relating to these requirements.<sup>5</sup> Because disasters may result in supply chain issues, labor shortages, and other disruptions, construction costs in disaster-affected areas may be unusually high. Therefore, HUD is waiving certain regulatory requirements relating to total development cost limits. Specifically, a disaster-affected IHBG recipient may exceed the current total development cost maximum by 20 percent without prior HUD review or approval. Grantees must still notify HUD of their use of this flexibility and maintain proper documentation throughout. Moreover, grantees can request written approval to exceed the 20 percent flexibility.

**Income Verification.** To be eligible for low-income housing supported by IHBG, families must regularly provide documentation proving they meet the income requirements outlined by statute and federal regulations.<sup>6</sup> IHBG recipients are responsible for collecting and maintaining that documentation. However, families in disaster-affected areas may struggle to access documents certifying their income. The income verification waiver allows IHBG grantees to require income recertifications via alternative methods and on a less frequent basis. For example, income may be verified through a family's self-certification by phone or email.

**Assistance to Middle-Income Families Impacted by a Disaster.** The Native American Housing Assistance and Self-Determination Act (NAHASDA)<sup>7</sup> and federal regulations pertaining to IHBG<sup>8</sup> require IHBG grantees to limit assistance to low-income Native American families, meaning those whose income does not exceed 80 percent of the area median income,<sup>9</sup> with some exceptions. For example, IHBG recipients may use 10 percent of funds to serve Native American families whose income falls within 80 and 100 percent of the area median. During a disaster,

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<sup>2</sup> These include programs authorized under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136) and the American Rescue Plan (ARP) Act (Public Law 117-2) such as IHBG-CARES, IHBG-ARP, ICDBG-CARES, and ICDBG-ARP.

<sup>3</sup> [24 C.F.R. Part 1000](#).

<sup>4</sup> Under the Native American Housing Assistance and Self-Determination Act of 1996 25 U.S.C. § 4101 et seq. (NAHASDA).

<sup>5</sup> Total development cost regulations are described in [24 C.F.R. §§ 1000.156](#), [1000.158](#), [1000.160](#), and [1000.162](#).

<sup>6</sup> [24 C.F.R. 1000.128](#).

<sup>7</sup> 25 U.S.C. § Section 201.

<sup>8</sup> [24 C.F.R. § 1000.104](#), [1000.106](#), [1000.108](#), and [1000.110](#).

<sup>9</sup> 25 U.S.C. § 4103.

however, IHBG recipients may see fit to provide more substantial aid to non-low-income families. Therefore, HUD is waiving certain income requirements:

1. IHBG recipients may exceed the 10 percent cap on assistance to Native American families with incomes between 80 and 100 percent of the area median without prior approval from HUD.
2. Similarly, IHBG recipients may provide assistance to Native American families whose incomes are at or below 120 percent of the area median without prior HUD approval.

In both cases, non-low-income families must be impacted by the disaster and have no other means to be housed in order to receive assistance. In addition, such assistance must be temporary in nature and the grantee must maintain proper documentation of their use of this flexibility.

*b. Indian Community Development Block Grant Waivers and Flexibilities*

In the Notice, HUD also outlines two separate waivers and flexibilities to assist ICDBG grantees in areas covered by Presidentially Declared Disasters during 2024 and 2025.

**Purchasing Equipment.** In general, ICDBG recipients may not use funds to purchase equipment.<sup>10</sup> However, in a disaster, construction equipment may be immediately necessary to carry out eligible relief and recovery activities. In response, HUD is waiving the prohibition on purchasing equipment so ICDBG grantees can carry out clearance, rehabilitation, and construction activities for housing, public facilities, and other recovery purposes.

**Emergency Payments for Up to Six Months.** ICDBG recipients are only permitted to assist with income payments on an emergency basis for a period of up to three months.<sup>11</sup> Income payments are individual payments to families for needs such as food, clothing, rent, mortgage, or utilities. During a disaster, low- and middle-income families may require longer-term assistance. HUD is waiving the three-month restriction to allow ICDBG recipients to support income payments for up to six months. Grantees may also request written approval to provide support beyond that.

*c. Waiver Use*

IHBG and ICDBG grantees must notify the Administrator in their Office of Native American Programs Area (ONAP) Office in writing to use any of the above waivers. The written notification must include the following details:

- the requestor's (1) name, (2) title, (3) contact information, and (4) Tribe or Tribally Designated Housing Entity;
- the Presidentially declared major disaster area(s) where the waivers will be used;
- the date on which the grantee anticipates the first use of the waiver or flexibility, and its expected duration, which must include a specific end date; and

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<sup>10</sup> [24 C.F.R. § 1003.207\(b\)\(1\)\(i\).](#)

<sup>11</sup> [24 C.F.R. § 1003.207\(b\)\(4\).](#)

- a list of the waivers and flexibilities that the grantee will use.

Finally, IHBG and ICDBG recipients may seek additional waivers and flexibilities. Requests will receive expedited review and be approved on a case-by-case basis. Consideration will be subject to statutory limitations and pursuant to all relevant federal regulations.<sup>12</sup>

## II. NAIHC Legislative Committee Meeting

NAIHC Vice Chairperson Sami Jo Difuntorum and NAIHC Finance and Operations Manager Ryan Edwards facilitated the Legislative Committee Meeting.

### a. Budget and Appropriations

The 118<sup>th</sup> Congress is scheduled to return the second week of January. The House and Senate have marked up their fiscal year (FY) 2024 appropriations bills at vastly different levels. The Senate has advanced bills to the spending levels set by the Fiscal Responsibility Act (roughly FY 2023 levels), while the House has written most of its bills to FY 2022 levels. During the fall of 2023, Congress passed two continuing resolutions in order to buy more negotiating time and avert a government shutdown. Congress has until January 19, 2024 to pass funding for Agriculture, Energy-Water, Military Construction-Veterans Affairs, and Transportation, Housing and Urban Development, and Related Agencies Bills (THUD), and until February 2, 2024 for all other agencies, including the U.S. Department of Interior (DOI). House Speaker Mike Johnson (R-LA) has vowed to not bring forward another short-term continuing resolution. If he holds true to his word, Congress must pass full-year appropriations or a long-term continuing resolution in order to avoid a government shutdown.

One of the participants asked what would happen to the THUD if Congress does not pass it by January 19, 2024. NAIHC staff responded that Congress can pass it at any time, but that the process may be slowed down by efforts to pass other appropriations bills by the February 2, 2024 deadline.

In July 2023, both the Senate and the House released their respective FY 2024 THUD bills. 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.

Programs	House THUD	Senate THUD
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

<sup>12</sup> [24 C.F.R. § 5.110.](#)

*b. Tribal Housing Legislation*

**NAHASDA.** The Senate Committee on Indian Affairs (SCIA) Chair Brian Schatz (D-HI) and Vice Chair Lisa Murkowski (R-AK) introduced legislation in 2023 to reauthorize NAHASDA (S.2285). The reauthorization bill was later added as an amendment to the Senate's National Defense Authorization Act (NDAA), which was passed by the full Senate on July 27, 2023. Unfortunately, NAHASDA was removed from the NDAA during conference negotiations with the House, but supporters are now working to identify another large vehicle to which the NAHASDA reauthorization can be attached, such as an appropriations omnibus or minibus.

One of the participants asked whether a NAHASDA bill attached to an appropriations bill would be limited to only reauthorizing NAHASDA, or whether it would be possible for it to include the additional NAHASDA amendments that were included in the version attached to the NDAA. NAIHC staff responded that the NAHASDA bill would not be limited to only a reauthorization. However, Congressional members might push to limit the NAHASDA reauthorization to a streamlined version, without the additional amendments that were attached to the NDAA bill. To help advocated for the additional amendments, NAIHC staff highlighted a couple of popular talking points with Republican Congressmembers, including: (1) streamlining the environmental review process for homeownership; and (2) increasing housing support for veterans.

The following are bills introduced in 2023 that would have benefited tribal housing. Congress will need to reintroduce these bills in 2024 for the bills to be passed.

**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 U.S. Department of Agriculture (USDA) Single Family Home Loan Program to Native Community Development Financial Institutions (CDFI) 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 (R-OK), Co-Chair of the Native American Caucus, advocated strongly for the bill.

**Tribal 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 the 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. 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 set 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 set 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.

**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 addressed 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 have provided funding for Native CDFIs to expand outreach for the program to increase veteran participation. Additionally, the bill would have adopted the re-lending model through Native CDFIs, which would provide Native CDFIs with more flexibility to use the funding in a way that fits Native communities.

**Unlocking Native Lands and Opportunities for Commerce and Key Economic Developments Act of 2023 (S.1322) (“UNLOCKED Act”).** Senator Schatz and Senator Murkowski introduced the UNLOCKED Act in 2023. The bill would have amended 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 was intended to eliminate barriers to tribal infrastructure and economic development projects.

*c. TIAC Update*

Participants gave an update on the Tribal Interagency Advisory Committee (TIAC) for HUD. TIAC is currently working on a number of projects, including developing data and studies on housing construction costs, how to make housing more affordable, and procurement issues. TIAC is also addressing the lack of funding for tribal housing by circulating a white paper with messaging that tribes can use to advocate for equity in funding when speaking with Congress. To strengthen tribal advocacy, TIAC is focusing on showing the vast difference in funding between NAHASDA programs and the rest of the HUD programs. TIAC is advocating that any changes in funding should be in parity with other HUD program funding increases. The participants noted that the vast majority of HUD's budget increases in the last few years have been in the Section 8 Housing Voucher program, due to automatic inflation adjustments that apply to the program. In contrast, NAHASDA does not have that inflation adjustment, which contributes to the lack of increases in NAHASDA funding. TIAC is also looking at tribal homeownership issues, including how to make homeownership more affordable.

*d. ICDBG Regulations Tribal Consultation Comment Deadline Extended to January 30, 2024*

HUD is planning to start the rulemaking process to update the ICDBG program regulations (24 CFR § 1003). In accordance with HUD's Tribal Consultation Policy, 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.

*e. 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 be holding its Legislative Conference on February 5–7, 2024 in Washington, DC. Registration is now open. Registration and other information on the Legislative Conference can be found [here](#). Attendees will have opportunities to meet with Congressional staff to discuss legislative and policy issues affecting Indian Country. However, there is a chance that the Federal Government will shut down on February 2, 2024, if Congress cannot pass the appropriations bills by that deadline. If that is the case, NAIHC will still hold the Legislative Conference but will shift the focus to working more closely with NAIHC members to develop housing advocacy agendas.

***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.