



215 SW Washington Street, Suite 200
Portland, OR 97204


T 503.242.1745
F 503.242.1072

HOBBSSTRAUS.COM

MEMORANDUM

February 13, 2024

TO: TRIBAL HOUSING CLIENTS

FROM:  Ed Clay Goodman & Elizabeth M. Bailey
HOBBS, STRAUS, DEAN & WALKER, LLP

RE: ***2024 National American Indian Housing Council Legislative Conference***

From February 6-7, 2024, the National American Indian Housing Council (NAIHC) held its annual Legislative Conference in Washington, D.C. to discuss issues pertaining to Tribal housing. Throughout the Conference, attendees heard administrative and legislative updates from federal and congressional partners. This report summarizes the key takeaways from the convening.

I. NAIHC Legislative Committee

The NAIHC Legislative Committee held its monthly session in person just prior to the Conference, during the afternoon of February 5, 2024. The Committee meeting began with a panel discussing various legislative items.

a. Panel Discussion

1. Jad Atallah, the Department of Housing and Urban Development (HUD) director of the Office of Performance and Planning.

Mr. Atallah's comments focused on the Build America Buy America (BABA) requirements. Tribes have received two extensions of the deadline for compliance, and the current extension expires on May 24, 2024. HUD has been engaged in Tribal consultation on BABA, and has received lots of useful feedback. That feedback has had a significant impact on the "relief" that HUD is going to seek regarding Tribes and Tribally Designated Housing Entities (TDHEs). But he cautioned that it is not likely that Tribes will get a permanent extension or waiver of the BABA requirements, and that even if there is an extension past May 24, it will be short, only a couple months at most. The work that HUD is engaged in with the Office of Management and Budget's (OMB) "Made in America" office has been to develop a means of applying BABA to Tribes that will minimize adverse financial and administrative impacts. But he is not sure what this is going to look like at this time. Meanwhile, Tribes need to be preparing for compliance with the BABA requirements, which, in sum, mandate that all federal grant funds to be expended on infrastructure must use iron, steel, and other manufactured products that are

made in the United States. Following his opening remarks, Mr. Atallah responded to questions from participants:

Q: Since there is an exemption from BABA for “projects” under \$250,000, will there be a definition that is helpful?

A: HUD’s Office of Public and Indian Housing has come up with a definition. It will not allow Tribes to split up projects into small pieces to avoid BABA, but could be useful in figuring out what parts of the work are a project for purposes of BABA compliance.

Q: Have HUD and OMB considered the recent Executive Order 14112, requiring that agencies provide flexibility to Tribes in operating Tribal programs?

A: Yes, this E.O. has been very much part of the discussion with OMB, and has strengthened HUD’s arguments with regard to providing relief to Tribes. Further, there has been a lot of discussion internally at the White House about coming up with a BABA approach that is consistent across various Tribal programs.

Comment: HUD should designate a single point of contact as well as set up a clearinghouse for information on BABA compliance.

A: Yes, this is a good idea and HUD will work to implement.

Q: Have you seen any agencies granted permanent BABA waivers?

A: No, but we have seen longer-term waivers, as well as ongoing project-specific waivers. Tribes/TDHEs should look carefully at the process for project-specific waivers and decide if utilizing that approach would be beneficial.

Q: How has OMB been monitoring BABA compliance so far?

A: OMB is interpreting the term “infrastructure” broadly, and requiring other agencies to do likewise. OMB has been monitoring HUD’s website and guidance documents, and has called HUD out on several occasions for being too limited in its approach.

Q: Is there anything we can do to make our case to OMB about the need for Tribes to be exempt or to have relief?

A: Yes, you can and should reach out directly to OMB with your concerns. OMB is very data driven. To the extent you have specific data on the increased costs or inability to find contractors, suppliers, or materials, you should provide them with that information. If you find that it is hard to get information and data from potential contractors and suppliers, you should also share that with OMB. Someone used the term “unfunded mandate,” and that would be useful to state to OMB as well. Tribes and TDHEs will not be provided any additional funds for BABA compliance.

Q: Who is going to monitor BABA compliance and what will be the consequences for noncompliance?

A: ONAP will monitor BABA compliance as part of its routine monitoring of Tribal housing programs. Even if it is the subcontractors on a project who are in violation, and even if they are unaware of BABA requirements, the obligation to comply ultimately falls on the Tribe/TDHE as the grantee. The consequences for noncompliance will be to disallow the costs expended on the non-compliant project.

2. Kayla Laywell, National Low Income Housing Coalition (NLIHC)

Ms. Laywell gave an overview of current legislative developments. First, she explained that the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) reauthorization bill approved by the Senate and attached to the Senate version of the National Defense Authorization Act (NDAA) ultimately did not survive the conference negotiations. There will be an effort again this year to try and attach that bill to another “must-pass” bill.

Appropriations continue to be a hot topic. So far for FY2024, Congress has funded Continuing Resolutions at FY 2023 levels. The current CR for Transportation-HUD funding expires on March 1, 2024. The House and Senate have announced a deal on topline spending for FY 2024. Non-defense accounts are capped at \$773 billion, which is level with FY 2023 enacted spending. Leadership has also reached a deal on subcommittee allocations, but that has not yet been made public. Senior appropriators are hopeful they will be able to pass full-year appropriations by the dual March deadlines. We are also anticipating the release of the Administration’s proposed budget for FY2025 in the coming months.

Aside from NAHASDA, there are several other housing-related bills that are under consideration this year.

S.70 (Sen. Thune R-SD) / H.R.3579 (Rep. Johnson, R-SD) is the Tribal Trust Land Homeownership Act, and would streamline the Bureau of Indian Affairs’ (BIA) lease review and approval process. It would also seek to hold BIA accountable through the establishment of an ombudsman. The Senate passed S.70 by unanimous consent.

S.185 (Sen. Rounds R-SD) would direct the VA to carry out a pilot program to address the feasibility and advisability of making direct housing loans to Native Community Development Financial Institutions (CDFIs). Senate Committee on Veterans’ Affairs reported favorably in February 2023. Senate Committee on Banking, Housing and Urban Affairs held a hearing in November 2023.

H.R.6785 (Blaine Luetkemeyer (R-MO) / S.2790 – Tina Smith (D-MN)) would reform a number of rural housing programs, including those that affect Tribes.

H.R. 7024, the “Tax Relief for American Families and Workers Act of 2024”, would expand the Child Tax Credit, among other changes to the Tax Code. NLIHC is looking at this as a potential vehicle for changes to the Low Income Housing Tax Credit (LIHTC) program.

3. Natasha John, NAIHC's Lobbyist

NAIHC has several priorities for the coming year. First is reauthorization of NAHASDA. As noted above, NAIHC is looking for a must-pass bill to attach a NAHASDA reauthorization bill. NAIHC has seen the NAHASDA reauthorization bill recently introduced by Rep. Maxine Waters (D-CA), but it contains the same provisions regarding Oklahoma tribes that lead NAIHC to oppose Rep. Waters' bills in the past.

Second is to seek increases in the Indian Housing Block Grant (IHBG) and other tribal housing appropriations. Tribal housing programs have been hit very hard by the last couple years of inflation. Federal funding has not kept pace.

Third is to look at a potential legislative exemption or other fix regarding the applicability of BABA to Tribes/TDHEs, or, in the alternative, to obtain more appropriations to meet the increased costs of BABA compliance. They are looking for sponsors as well as draft language.

4. Joanna Donohoe, South Dakota Native Homeownership Coalition

The Coalition has been working hard to further S. 185 because of the need to include Native CDFIs in the development and deployment of federally-funded housing voucher and loan programs. The federal agencies in charge of these programs do not have the on-the-ground experience or contacts in Indian Country to ensure effective use of these program dollars. As a result, these programs are underutilized.

II. NAIHC Legislative Conference: Plenary Session

On Tuesday, February 6, NAIHC held its plenary session, which included presentations throughout the day from federal legislators and federal programs.

a. Chief Lynn Malerba, U.S. Treasurer, Department of Treasury

The plenary session began with a keynote speech from Chief Lynn Malerba, U.S. Treasurer. Her remarks focused on efforts the Department of Treasury (DOT) has undertaken to improve housing in Tribal communities. First, Chief Malerba celebrated the new Office of Tribal and Native Affairs. It is the first of its kind at the Department and serves as a "a permanent hub for Tribal policy within Treasury." Since its establishment, the Office has held numerous Tribal consultations, educated its non-Tribal staff on Treasury's trust and treaty responsibility to Tribal Nations, participated in the White House Council on Native American Affairs, and assisted with the administration of various COVID-19 relief funds directly to Tribes, including American Rescue Plan Act dollars.

Chief Malerba acknowledged the critical importance housing serves in Tribal communities, particularly as a social determinant of health, and expressed support for self-governance, self-determination, and Tribal efforts to reacquire ancestral lands. Next, Chief Malerba highlighted a number of specific Tribal resources and initiatives taking place at Treasury, including the [Tribal Housing Stability Report: Supporting Tribal Housing Stability](#)

[with Pandemic Response Funds](#), published in December 2023, and the [Tribal resource page](#) on [mymoney.gov](#), which promotes financial literacy and money independence.

Chief Malerba announced that the Homeowner Assistance Fund (HAF), authorized under the American Rescue Plan Act, is closing out soon. She urged Tribes who have not already done so to expeditiously submit Homeowner Assistance Fund plans to access the remainder of their balance. Tribes who need additional assistance or have questions about their outstanding balances may reach out to haf_tribal@treasury.gov at any time. To end her remarks, Chief Malerba celebrated the recent signing of [Executive Order 14112](#): Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination. She added that Treasury is fully supportive and is looking forward to implementing the new Executive Order.

b. Joshua Jackson, Tribal Policy Advisor, Department of Treasury

Joshua Jackson from the Department of Treasury overviewed the status of various pandemic relief funds, including the State and Local Fiscal Recovery Funds and the Local Assistance and Tribal Consistency Fund, both of which are very flexible. He also discussed the status of the HAF in greater detail. He emphasized that Tribes need to submit a HAF Plan in order to access the remainder of their HAF allocations, if they have not done so already. HAF Plans include details about how funds are going to be spent, but remain flexible and open to amendment should situations change. Acceptable uses for HAF funds include mortgage assistance, home repairs, and payments for mobile homes, insurance, taxes, utilities, and broadband, among other things. Mr. Jackson noted that a significant number of Tribes have not submitted HAF Plans and urged any Tribe with questions or concerns to reach out to haf_tribal@treasury.gov.

c. Adrienne Todman, Deputy Secretary, Department of Housing and Urban Development

Adrienne Todman, Deputy Secretary for the Department of Housing and Urban Development (HUD), discussed HUD's role and responsibilities to Tribal Nations. She emphasized the importance of Executive Order 14112, noting HUD's support and eagerness to implement it. She also expressed her commitment to the newly-established HUD Tribal Intergovernmental Advisory Committee. Finally, Ms. Todman stated that one of her priorities is to educate her fellow HUD colleagues on the trust and treaty relationship the federal government has with Tribes.

d. David Berenbaum, Deputy Assistant Secretary for Housing Counseling, Department of Housing and Urban Development

David Berenbaum's remarks focused on the Housing Counseling Agency's efforts to establish a new housing counseling certification program for those interested in serving Tribal communities, particularly via a [proposed rule](#) release in January 2023. He thanked Tribes for all the thoughtful commentary provided throughout the Tribal consultation period. Lastly, he announced a forthcoming final rule to allow virtual housing counseling.

d. Federal Panel, HUD Office of Native American Programs

A panel of federal partners from the Office of Native American Programs (ONAP) at HUD—Deputy Assistant Secretary Heidi Frechette, Jad Atallah, Krisa Johnson, and Hilary Atkin—presented a series of administrative updates pertaining to Tribal housing. Ms. Frechette began by highlighting the importance of Executive Order 14112 and celebrated the establishment of the Tribal Intergovernmental Advisory Committee. Mr. Atallah of the Performance and Planning Office added that the intention of the Executive Order is to fundamentally change the philosophy of federal financial assistance to Tribes in order to “err on the side of” waivers, set-asides, and flexibilities. On that note, Mr. Atallah announced a forthcoming notice of funding opportunity, with Tribal set-asides, for the [Preservation and Reinvestment Initiative for Community Enhancement Program](#) for manufactured housing investments. Mr. Atallah also urged Tribes to consider the annual Choice Neighborhood Planning Grant, for which Tribes are eligible but have never won.

Mr. Atallah provided a brief update on appropriations for Indian housing. Currently, the federal government is operating under a third continuing resolution, but HUD is optimistic that full-year appropriations will be passed by the dual deadlines in March. Mr. Atallah reported that Indian housing programs are “unique” this year in that both the House and Senate have proposed increases for the IHBG. This bodes well for IHBG as final appropriations are negotiated. Finally, he highlighted a number of policy fixes included in either the House or Senate appropriations bills—

- *Section 184 “Indian area.”* This fix would extend section 184 loans to the entire country, rather than just in “Indian areas,” in order to expand the program’s reach.
- *Section 184 timeframe.* This fix would allow section 184 loans to be for up-to forty years, rather than thirty.
- *Tribal HUD-VASH.* This fix would allow Tribal HUD-VA Supportive Housing program (Tribal HUD-VASH) recipients to house veterans in Formula Current Assisted Stock units with IHBG funds.

Krisa Johnson of the Loan Guarantee Office discussed updates pertaining to the section 184 program. She noted that she is currently working with the Office of Management and Budget to issue a final rule for the program by the spring. There will be an accompanying handbook to provide clear and detailed guidance for all relevant stakeholders. HUD will host multiple training sessions on the handbook once it is published. Responding to a question from the audience, Ms. Johnson said she would look into opportunities for Tribes to comment on this handbook as it is being drafted.

Hilary Atkin of the Grants Management Office discussed updates pertaining to the IHBG and Indian Community Development Block Grant programs. She reminded attendees of the [notice of funding opportunity](#) for the IHBG-Competitive program. She noted that HUD implemented a number of changes as a direct result of recent Tribal consultations. There will be an upcoming national training on the notice of funding opportunity the week of February 19, 2024, with area-level trainings starting the week after. She added that as a result of the current continuing resolution, interim funding for IHBG is still available through February 15, 2024.

Regarding IHBG-Competitive, Ms. Atkin announced that HUD will be issuing awards in rounds throughout the year, the first of which was [announced](#) on February 7, 2024. She also reminded attendees that HUD is in the midst of Tribal consultation on [Indian Community Development Block Grant \(ICDBG\) regulations](#), which have not been updated in two decades. Finally, Ms. Atkin stated that the next round of renewals for the Tribal-HUD Veterans Affairs Supportive Housing Program (VASH) should be announced in the spring, with a possible expansion for existing grantees.

e. David Conrad, Deputy Director, Office of Indian Energy Policy and Programs, Department of Energy

David Conrad provided brief housing-related updates from the Office of Indian Energy Policy and Programs at the Department of Energy. He announced that the Department is hosting a [Tribal Clean Energy Summit](#) on February 27-28 and a notice of funding opportunity for clean energy technology is forthcoming.

f. Anna Maria Ortiz, Director of Natural Resources and Environment, Government Accountability Office

Anna Maria Ortiz briefly summarized the Government Accountability Office's (GAO) recent efforts to monitor federal Tribal housing programs. She emphasized that Tribal input is extremely valuable and important to her job. Oftentimes, GAO decides to look into an issue because of Tribal input. She briefly summarized two of the recent reports relating to Tribal housing—[Native American Veterans: Improvements to VA Managements Could Help Increase Mortgage Loan Program Participation](#) and [Tribal Issues: BIA Should Take Additional Steps to Improve Timely Delivery of Real Estate Services](#)—before reporting the current issues GAO is looking into.

- Tribal co-management agreements.
- Tribal grantee experience with the Department of Justice's JustGrants system.
- Microgrids for Tribal electricity.

Ms. Ortiz encouraged attendees to reach out with any feedback on these issues or any others relating to federal programs for Tribal Nations.

g. Joaquin Altoro, Rural Housing Service, Department of Agriculture

Joaquin Altoro gave a brief overview of the Rural Housing Service's role in rural and Tribal housing. The Rural Housing Service is the largest branch of the rural development mission area within the Department of Agriculture. It has three branches—single-family lending, multi-family lending, and community facilities. Mr. Altoro stated that the mission is to expand rural housing opportunities in rural and Tribal communities but admitted he could better serve Tribal Nations. Just under .2% of single-family loans are on Tribal lands, for instance. Mr. Altoro highlighted the [Native Community Development Financial Institutions \(CDFI\) Fund Relending Pilot Program](#), which allows Native CDFIs to improve homeownership opportunities

for Tribal members. Responding to concerns from an attendee, Mr. Altoro vowed to improve the Rural Housing Service's customer service and response time.

h. Senator Catherine Cortez Masto, Senate Committee on Indian Affairs

Senator Cortez Masto (D-NV), member of the Senate Committee on Indian Affairs, discussed legislative updates pertaining to Tribal housing. She celebrated the historic investments in Tribal housing that Congress has enacted in the past few appropriations cycles. She also stated that reauthorization of the Native American Housing Assistance and Self-Determination Act of 1996 remains a top priority of hers. She also encouraged attendees to reach out to their Federal Home Loan Bank, as she did on behalf of Tribes in Nevada, to unlock more capital for investment in Tribal housing. She also highlighted her recently enacted [manufactured homes grant program](#) and her Tribal tax bill that puts Tribes on equal footing with state and local governments for tax credits.

i. Senator Lisa Murkowski, Ranking Member of the Senate Committee on Indian Affairs

Senator Lisa Murkowski's (R-AK) remarks focused on access to safe, affordable housing, particularly in the most rural and remote Tribal communities. She said she is working "very hard" on increasing appropriations for IHBG despite the "tough budget environment." She also expressed that NAHASDA reauthorization is a top priority and stated that she is working with HUD and the Office of Management and Budget to understand the implications of the Build America, Buy America requirements for Tribes.

j. Representative Derek Kilmer

Representative Derek Kilmer (D-WA) provided brief remarks to attendees. He encouraged Tribes to maintain strong advocacy and stated that NAHASDA reauthorization is one of his priorities before he retires from Congress. He also highlighted his bill—the Honoring Promises to Native Nations Act ([H.R.9439](#) in the 117th Congress)—to implement the recommendations found in the U.S. Commission on Civil Rights' "[Broken Promises: Continuing Federal Funding Shortfall for Native Americans](#)."

k. Senator Brian Schatz, Chairman of the Senate Committee on Indian Affairs

Attendees heard brief video remarks from Senator Brian Schatz (D-HI), chairman of the Senate Committee on Indian Affairs. He celebrated Congress' enactment of historically high funding for Indian housing in the last fiscal year. He said his upcoming priorities are NAHASDA reauthorization ([S.2226](#)) and passage of the Tribal Trust Land Homeownership Act ([S.70](#)), both of which have passed the Senate. He noted that he is working to get these attached to Transportation-HUD appropriations bills.

l. Representative Mary Peltola

Representative Mary Peltola (D-AK) also gave brief recorded remarks via video. She expressed that her priority is on working NAHASDA reauthorization into appropriations bills.

m. Low Income Housing Tax Credit Panel

A panel comprised of Lorna Fogg and Robin Thorne of RTHawk LIHTC consultants, Marcy Gouge and James Schlender of Lac Courte Oreilles, and Ed Clay Goodman of Hobbs Straus Dean & Walker, gave an update on LIHTC. Ms. Fogg and Ms. Thorne spoke about the need for legislative reform of the LIHTC program to ensure that more tribes in more states are able to access LIHTC funding. LIHTC is the largest funding source for the development of affordable housing for low income families. The IHBG appropriations have not kept up with inflation, and LIHTC is one of the main sources of sufficient funding. But there are some states that do not provide LIHTC for tribes, or who set up their LIHTC scoring in such a way that it is difficult for tribes to succeed. There have been some legislative proposals over the years sponsored by Senator Maria Cantwell (D-WA) to revise the LIHTC program, and her most recent bill contains a number of helpful, Tribal-specific provisions.

Ms. Gouge and Mr. Schlender spoke to the bottleneck created in LIHTC project funding by the very slow process by which BIA approves leases and provides title status reports (TSRs). LIHTC projects require leases and leasehold mortgage to provide the necessary collateral for the LIHTC investors. Delays in approvals by the BIA result in delays in funding of these projects. Mr. Schlender encouraged tribes who have the capacity to consider adopting Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act) ordinances and taking over the review and approval process themselves.

Mr. Goodman spoke about the processes involved at year 15 of LIHTC projects, when the initial compliance period ends and the LIHTC investor exits the partnership. There are various ways to accomplish this (by dissolving the partnership and transferring the project to the Tribe/TDHE, or maintaining the partnership and having a tribal entity step in as the limited partner). There are steps for approval by the relevant state agencies that take some time to work out, and so starting that process up early can help alleviate delays once you hit year 15. Because the leases and leasehold mortgages used at the beginning will need to be unraveled at this stage, Tribes/TDHEs will often run into the same delay issues with BIA approvals as described by Ms. Gouge and Ms. Schlender.

Conclusion

If you have any questions about this memorandum or any of the topics discussed in this memorandum, please contact Ed Clay Goodman (egoodman@hobbsstraus.com). Ed may also be reached at 503-242-1745.