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MEMORANDUM

April 4, 2024

TO: TRIBAL HOUSING CLIENTS

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

RE: ***NAIHC April 4, 2024 Legislative Committee Meeting and Other Updates***

This memorandum provides a synthesis of information presented during the National American Indian Housing Council (NAIHC) Legislative Committee Meeting held on April 4, 2024, as well as updates on other housing matters.

I. NAIHC Legislative Committee

NAIHC Executive Director Douglas Marconi, NAIHC Legislative & Program Aide Blythe McWhirter and NAIHC Finance and Operations Manager Ryan Edwards facilitated the Legislative Committee Meeting.

a. Build America, Buy America Act (BABA)

NAIHC began by discussing the Build America, Buy America Act (BABA) and how it will impact tribes and Tribally Designated Housing Entities (TDHEs). BABA was enacted on November 15, 2021 and establishes a domestic content procurement preference (“Buy America Preference,” or “BAP”) for Federal infrastructure programs. On August 23, 2023, United States Office of Management and Budget (OMB) published a final rule to implement BABA, located at [2 CFR Part 184](#) and incorporated into 2 CFR Part 200.

The BABA requires the United States Department of Housing and Urban Development (HUD) to ensure that none of the funds made available for infrastructure projects may be obligated by HUD unless HUD has taken steps to ensure that all iron, steel, manufactured products, and construction materials used in a project are produced in the United States. Projects include “the construction, alteration, maintenance, or repair of infrastructure in the United States.” The BAP applies to *all sources* of Federal Financial Assistance (FFA) provided to tribes, TDHEs, and other tribal entities (collectively “Tribal Recipients”) involving infrastructure projects. HUD has issued two extensions of the deadline for tribal compliance with BABA requirements, and the current extension expires on May 24, 2024. Please see our September 22, 2023 and November 6, 2023 memoranda for a more detailed analysis of the BABA requirements and the effects that BABA will have on tribes.

HUD has published a Request for Information (RFI) on the implementation of the BABA requirements. The RFI is soliciting feedback on how the purchasing requirements for iron, steel, construction, and manufacturing materials will impact costs and the ability of tribes and TDHEs to build housing. The RFI can be found [here](#). **Comments are due by April 15, 2024**, and can be submitted at [regulations.gov](#). Mr. Marconi commented that BABA could have a significant negative impact on tribes and TDHEs, inhibiting their efforts to develop affordable housing. He therefore encouraged tribes and TDHEs to submit comments to HUD.

Additionally, Mr. Marconi and Ms. McWhirter commented that NAIHC has drafted a letter to send to HUD and OMB on a proposed strategy for addressing how BABA applies to tribes and TDHEs. The letter includes language addressing the conflict caused by the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) Native preference requirements and BABA requirements. The letter further requests that HUD issue a waiver for application of BABA to tribes and TDHEs until HUD determines how BABA will impact tribal costs for projects. The NAIHC staff noted that anyone interested in reviewing the NAIHC BABA letter can reach out to NAIHC staff to request it.

One of the participants commented that her tribe has submitted documentation to HUD showing how much more expensive a particular procurement would be if it complied with BABA compared to procurement that is not BABA-compliant. Mr. Marconi recommended that other tribes submit similar comparisons to HUD to demonstrate the detrimental impact that BABA will have on tribal communities.

b. Budget and Appropriations

Ms. McWhirter provided an overview of the appropriations updates. She noted that on March 9, 2024, the President signed a six-bill, \$467.5 billion final fiscal year (FY) 2024 appropriations package (H.R.4366 – Consolidated Appropriations Act, 2024) into law, which included the Transportation, Housing and Urban Development, and Related Agencies Bills (THUD) bills. The THUD bill includes a significant amount of funding appropriated to American Indian and Native Hawaiian housing programs compared to FY 2023, summarized in the table below. On March 23, 2024, the President also signed the remaining six appropriations bills into law (H.R. 2882 – Further Consolidated Appropriations Act, 2024), funding all government agencies through the end of FY 2024.

Ms. McWhirter also commented that on March 11, 2024, the President released his FY 2025 Budget Request, including his proposal for HUD in FY 2025. Importantly, the FY 2025 discretionary budget is capped at roughly FY 2023 enacted levels by the spending limits set by the Fiscal Responsibility Act (P.L.118-5). This means that the President cannot request significant increases for discretionary programs without offsetting the boost with cuts elsewhere. As such, the FY 2025 Budget Request is significantly slimmer across the board than its predecessor.

Overall, the President requests \$1.05 billion for Native American Programs, \$287 million (21%) below FY 2024 enacted levels. Ms. McWhirter noted that this cut comes almost entirely from the Indian Housing Block Grant, which suffers a proposed \$290 million (26%) decrease. The FY 2025 Budget Request flat-funds every other account with the exception of Section 184 Loans,

which got a significant \$500,000 (33%) boost. Lastly, the President did not request new funds for HUD-Veterans Affairs Supportive Housing (HUD-VASH). A full breakdown of proposed funding for Tribal housing programs is below.

Native American Programs	FY2023	FY2024	FY 2025 Request
Tribal HUD-VASH	\$7.5 million	\$7.5 million	\$0
Indian Housing Block Grant (IHBG)	\$787 million	\$1.11 billion	\$820 million
Competitive Grants	\$150 million	\$150 million	\$150 million
Title VI Loans	\$1 million	\$1 million	\$1 million
Indian Community Development Block Grant (ICDBG)	\$75 million	\$75 million	\$75 million
Training and Technical Assistance	\$7 million	\$7 million	\$7 million
National Organization Funding (per Sec.703 of NAHASDA)	\$2 million	\$2 million	\$2 million
Section 184 Loans	\$5.5 million	\$1.5 million	\$2 million
Imminent threats to health and safety	\$5 million	\$5 million	\$5 million
Native Hawaiian Program			
Native Hawaiian Housing Block Grant (NHHBG)	\$22 million	\$22.3 million	\$22.3 million
Training and Technical Assistance	\$1 million	\$1 million	\$1 million

Ms. McWhirter remarked that funding for NAHASDA remained flat for years after NAHASDA was passed in 1996, and that the increases in NAHASDA funding in FY 2024 has still not increased enough to keep pace with inflation. With the decrease in funding for Indian housing included in the FY 2025 Budget Request, NAIHC will be making significant efforts to meet with HUD and Congressmembers on the appropriations committees to advocate for additional funding for Indian housing.

In the spring and summer of 2024, 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 2025 appropriations bills during the summer of 2024, with a September 30, 2024 deadline by which they must pass the appropriations in order to continue funding the Federal Government.

c. NAHASDA Reauthorization

NAIHC staff also commented on the NAHASDA reauthorization efforts. As we have discussed in prior memoranda, 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, the NAHASDA reauthorization bill was removed from the NDAA during conference negotiations with the House.

Congress will need to reintroduce the NAHASDA reauthorization bill again this year. NAIHC is continuing to set up meetings with HUD officials and various Congressmembers to

advocate the NAHASDA reauthorization bill. One new strategy for this year that may have some success would be to break up the NAHASDA bill into multiple, separate bills in order to give each of those bills a greater chance of being passed. If the NAHASDA reauthorization bill was separate from the provisions amending the existing regulations, Congress might look more favorably on both the reauthorization and the program amendments. NAIHC will continue to develop this new proposed strategy and welcomes tribal feedback on how to make it effective.

One participant on the call asked whether NAIHC has been advocating with Congress specifically on the drug elimination program proposed as part of the NAHASDA reauthorization bill in 2023. NAIHC staff responded that they have not seen any recent updates on the program, but they will inquire about that program in their meetings with Congressmembers. Another participant commented that Senator Kathy Hogan (D-ND) has been a strong proponent of the drug elimination program over the years. He recommended that NAIHC and other tribal advocates work with Senator Hogan to reintroduce the drug elimination program as part of the NAHASDA reauthorization or as a stand-alone bill.

d. Other Tribal Housing Legislation

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 (H.R. 4155). The Tribal HUD-VASH program, introduced in 2023, 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 2023 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). Ms. McWhirter commented that NAIHC will be advocating that the bill’s language be revised to provide for an expansion of the HUD-VASH program so that it is available to a greater number of veterans.

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.

e. Section 184 Loan

NAIHC staff also provided an update on the Section 184 Indian Housing Loan Guarantee (“Section 184”) program. On March 20, 2024, HUD published the final rule on Section 184. The final rule is available [here](#). Section 184 provides a loan guarantee to borrowers in the event of borrower default, which is paid from the Section 184 Loan Guarantee Fund (“Fund”). The Section 184 allows Native American borrowers to purchase a home with a low down-payment and flexible underwriting. The final rule expands and revises the Section 184 program regulations to increase transparency and accountability, and to strengthen the program to better serve tribal communities. The final rule strengthens and modernizes the Section 184 program by:

- Codifying current practices, policies, and procedures, and adopting relevant industry standards;
- Incorporating Tribal comments on the Section 184 program;
- Setting expectations for lenders and servicers and providing an explicit framework within which lenders and servicers must operate;
- Enhancing safeguards for Native American borrowers and increasing partnership opportunities with Tribes; and
- Addressing program weaknesses identified by the United States Office of the Inspector General.

The final rule has a 90-day implementation period, during which time HUD will be drafting the Section 184 handbook implementing the final rule. Mr. Marconi commented that HUD anticipates sharing draft chapters of the handbook to tribal stakeholders in advance of publication

and will provide training to tribes and lenders, as appropriate. However, NAIHC staff commented that HUD has indicated that it will move quickly on this publishing the Section 184 handbook and the opportunities for comments will be short. Tribal advocates should be prepared to send in their comments as quickly as possible.

One of the participants suggested that NAIHC put out a call to invite tribal advocates to join an advisory committee to review the Section 184 Loan Rule. NAIHC commented that anyone interested in joining the committee should reach out to NAIHC.

f. HUD Preservation and Reinvestment Initiative for Community Enhancement (PRICE) NOFO

On February 28, 2024, HUD issued a [Notice of Funding Opportunity \(NOFO\)](#) which appropriates **\$225 million** in grant funding for the Preservation And Reinvestment Initiative For Community Enhancement (PRICE) competition. PRICE supports communities in their efforts to maintain, protect, and stabilize manufactured housing and manufactured housing communities (MHCs) preservation and revitalization of manufactured housing and eligible manufactured housing communities. Tribes and TDHEs are eligible to apply, and at least \$10 million of the available funding is intended for Tribal communities.

HUD will be hosting a number of webinars with more information on PRICE. Tribes and TDHEs can sign up for the [PRICE NOFO](#) webinars [here](#).

g. 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.

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.