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## MEMORANDUM

May 3, 2024

TO: TRIBAL HOUSING CLIENTS

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

RE: *NAIHC May 2, 2024 Legislative Committee Meeting and Other Housing Updates*

This memorandum provides a synthesis of information presented during the National American Indian Housing Council (NAIHC) Legislative Committee Meeting held on May 2, 2024, as well as updates on other housing matters.

### I. NAIHC Legislative Committee

NAIHC Legislative Committee Co-Chairs Sami Jo Difuntorum and Sharon Vogel, 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. Budget and Appropriations*

NAIHC provided an update on the Fiscal Year (FY) 2025 appropriations. Ms. McWhirter remarked that NAIHC is working with the National Congress of American Indians (NCAI) on consistent message for recommending that Congress increase the appropriation for tribal housing. She noted that on March 11, 2024, the President released his FY 2025 Budget Request, including his proposal for the U.S. Department of Housing and Urban Development (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 the FY 2024 Budget Request (and below the FY 2024 enacted levels in important ways).

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 (IHBG), 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 \$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.

<b>Native American Programs</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY 2025 Request</b>
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
<b>Native Hawaiian Program</b>			
Native Hawaiian Housing Block Grant (NHHBG)	\$22 million	\$22.3 million	\$22.3 million
Training and Technical Assistance	\$1 million	\$1 million	\$1 million

Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) IHBG funding appropriations remained flat for years after NAHASDA was passed in 1996. While the FY 2024 appropriations increased IHBG funding to amount to 1.9% of HUD's budget, that increase was not enough to keep pace with inflation. NAIHC is advocating that Congress increase IHBG funding in the FY 2025 appropriation to restore the IHBG to its original purchasing power when NAHASDA was authorized in 1996. NAIHC will advocate that the funding be increased be \$1.8 billion, or 2.5% of HUD's budget, to match inflation. NAIHC will also recommend that Congress appropriate at least \$5 million for Tribal HUD-VASH.

In the spring and summer of 2024, the House and Senate appropriations committees will continue to 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.

Ms. McWhirter commented that Representative Tom Cole (R-OK), chairman of the House Appropriations Committee, is moving quickly on the FY 2025 appropriations budget recommendations. Representative Cole is an enrolled member of the Chickasaw Nation and has frequently introduced and supported pro-tribal legislation. Ms. McWhirter remarked that this year will be a tough budget environment in which to advocate for increased appropriations because of the budget cap, but that NAIHC will continue its advocacy efforts. Ms. McWhirter noted that NAIHC has already met with Representative Jared Huffman's (D-CA) office, Josh Brecheen's (R-OK) office, and Senator Tina Smith's (D-MN) office to discuss NAIHC's budget recommendations. NAIHC has also met with Senator Smith regarding appropriations. Senator Smith is well-connected and supportive of increased appropriations for tribal housing and has asked NAIHC to be available for further discussions regarding appropriations for tribal housing. Mr. Marconi also commented that NAIHC attended a reception with the Alaska Federation of

Natives (AFN), during which they met with Representative Mary Peltola (D-AK). NAIHC has also met with United States Department of Interior (DOI) Secretary Deb Haaland, who is also supportive of tribal housing.

*b. NAHASDA Reauthorization*

NAIHC staff also discussed 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. NAIHC discussed a proposed new strategy for this year, which 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.

Ms. Vogel asked whether NAIHC has plans to request any field hearings, either on NAHASDA or on other tribal housing issues. Field hearings are congressional hearings held outside Washington, DC. NAIHC staff noted that it will work on a strategy for this internally and will focus on setting up field hearings with the Chair or Co-Chair on the House Financial Services Committee or SCIA.

One of the participants remarked on the particular challenge of reauthorizing NAHASDA in the House. Representative Maxine Waters insists that any NAHASDA reauthorization bill include language that targets the five tribes ("Five Tribes") in Oklahoma (Cherokee Nation, Seminole Nation, Muscogee (Creek) Nation, Chickasaw Nation, and Choctaw Nation), withholding NAHASDA funding from the Five Tribes unless they provide housing assistance to Freedman descendants. Representative Waters is the Ranking Member of the House Financial Services Committee, and is thus in a critical position with regard to NAHASDA reauthorization, which must sign off on such legislation. Representative Water has repeatedly attached language that adversely impacts the tribes involved in the freedman issue to each session's NAHASDA reauthorization bill. In doing so, she has effectively blocked consideration of those bills in the House. During the 2023 appropriations process, the Senate placed the NAHASDA reauthorization bill within the NDAA, a must-pass bill, to avoid this issue (as well as to avoid several holdouts in the Senate). But, as noted above, the House negotiators opposed inclusion, and it was removed from the final bill. Tribal advocates have had a difficult time finding allies in the House side to support a NAHASDA without the language on the freedman issue due to Representative Waters' leverage.

It has also been difficult to find allies in the House given the frequent chaos in House leadership over the last few years. The participants commented that tribal advocates will therefore need to be strategic on who to develop a relationship with in Congress so that if the House leadership changes, there is still support for NAHASDA reauthorization. To that end, NAIHC will focus on developing a relationship with Representative Hakeem Jefferies (D-NY), Minority Leader of the House, who would be next in line for leadership if the House changes control from Republican to Democratic.

Ms. Vogel noted one tribal housing issue that needs attention concerns subsidies for tribal housing. She remarked that tribally designated housing entities (TDHEs) often do not receive any subsidies for new units that they build. Given that these new units are provided for low-income families, it often becomes difficult for TDHEs to maintain adequate cash flows to maintain and operation the units without any subsidies to cover those costs. Ms. Vogel asked whether it is possible for TDHEs to access HUD's Section 8 vouchers while using NAHASDA funding. The participants on the call noted that tribes and TDHEs are not directly eligible for Section 8 vouchers (due to language in NAHASDA). The participants noted that TDHEs being ineligible for Section 8 vouchers is both a HUD policy issue and a statutory issue. NAHASDA specifically excludes TDHEs from being able to receive Section 8 funding and administer Section 8 programs. However, certain individuals in HUD are open to allowing TDHEs to use Section 8 funding in certain circumstances—for example, TDHEs can acquire and operate housing projects funded by project-based-rental-assistance vouchers, where the vouchers are tied to the project itself. However, TDHEs cannot use NAHASDA funds to support projects that have Section 8 voucher funding. Tribal advocates are continuing to advocate that HUD allow such subsidy layering and the use of Section 8 funds for TDHE programs.

As part of that advocacy, the participants noted that there are efforts to repeal the NAHASDA provision that excludes TDHEs from receiving Section 8 funding. Senator Warren and Senator Patricia Murray (D-WA) have written such separate Section 8 reform bills that would allow TDHEs to receive Section 8 funding. Drafting those bills as separate from the NAHASDA reauthorization bill might increase the chances of Congress passing those bills. NAIHC will continue its advocacy efforts to encourage Congress to pass such Section 8 reform bills.

*c. Build America, Buy America Act (BABA)*

NAIHC also discussed the Build America, Buy America Act (BABA) and how it will impact tribes and TDHEs. BABA was enacted on November 15, 2021 and establishes a domestic content procurement preference (“Buy America Preference,” or “BAP”) for Federal infrastructure programs.

The BABA requires HUD to ensure that none of the funds made available for infrastructure projects may be obligated by HUD unless it 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, Tribally Designated Housing Entities (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](#). HUD recently extended the deadline for comments on the RFI to **June 17, 2024**. Comments can be submitted at [regulations.gov](https://www.regulations.gov). Mr. Marconi commented that NAIHC will be meeting with NCAI and other advocates to strategize on advocating for blanket waiver for all tribes.

One participant remarked that HUD's Office of Native American Programs (ONAP) is attempting ensure this years' 2024 IHBG grant is obligated prior to expiration of HUD waiver on May 24, 2024. According to this commenter, if ONAP is able to obligate the IHBG grant to Tribes and TDHEs prior to the expiration of the waiver, Tribes and TDHEs would not be required to comply with BABA when expending funds from FY 2024 IHBG allocations. Note that while this may be the position of HUD ONAP, the U.S. Office of Management and Budget (OMB) is the ultimate decision maker regarding BABA compliance, and we do not know their position on this approach. Mr. Marconi commented that HUD and OMB have discussed the possibility of HUD issuing another six-month waiver for IHBG funds, so that OMB has the time to develop a consistent government-wide plan for all federal agencies to engage with tribes on BABA. NAIHC will be meeting with the SCIA to advocate for a broad BABA waiver for all housing. The participants discussed how NAIHC can submit a resolution through NCAI to address an overall tribal approach to BABA waivers.

The participants also discussed the BABA de minimis waiver available to Tribes/TDHEs. The de minimis waiver gives Tribes/TDHEs the flexibility to waive the BAP for a 5% portion of materials used in a project, provided that the 5% cannot not exceed \$1 million. For example, if the total cost of materials in a project is \$450,000, the Tribe/TDHE has the flexibility to procure up to \$22,500 (5%) in materials from foreign sources using the de minimis waiver. One of the participants recommended that each TDHE create a list of the most commonly used construction items that are not available in the United States and submit that list to ONAP in order to argue for additional waivers under HUD's waiver authority under section 70914(b)(2) ("the materials and products subject to the preference are not produced in the United States at a sufficient and reasonably available quantity or satisfactory quality). The list should include as many items as possible in the hopes that ONAP will determine that the items on the list will not count against the 5% cap on de minimis waivers, but be subject to their own separate waiver.

*d. Tribal Interagency Advisory Committee*

NAIHC also provided an update on the HUD Tribal Interagency Advisory Committee (TIAC). The TIAC has developed position papers on a number of topics, including construction costs, BABA, funding equity, ICDBG rulemaking, and data. The TIAC plans to continue to develop and release these positions papers in the coming months.

The TIAC will hold its next bi-annual meeting May 14–16, 2024 in Washington DC. One participant commented that TDHEs should notify TIAC members of any items they wish the TIAC to discuss with HUD department leaders, who may be in attendance at the TIAC meeting.

*e. Other Tribal Housing Legislation*

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

**Tribal Rural Housing Access Act (S. 3906).** Senator Elizabeth Warren (D-MA) introduced the Tribal Rural Housing Access Act bill in March 2024. Under the Tribal Rural Housing Access Act, the USDA would be required to set aside 5 percent of its funding under certain Rural Housing Service programs for use by tribes, tribally designated housing entities, tribal members, and tribal-owned entities. The legislation proposes the set aside for a range of loan and grant programs, including programs providing technical assistance, money for repair and rehabilitation of rural housing, and the construction of new, multi-family homes for low-income residents. One of the participants on the call asked whether the bill would make TDHEs eligible for HUD’s Section 8 funding. Ms. McWhirter responded that there is currently nothing in the bill on Section 8 funding but that NAIHC will address that with Senator Warren moving forward.

**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.

*f. Section 184 Loan*

On March 20, 2024, HUD published the final rule on Section 184 Indian Housing Loan Guarantee (“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. 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 has 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.

*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.

NAIHC will hold its Annual Convention at the Seminole Hard Rock Hotel & Casino, in Hollywood, Florida from June 24-27, 2024. More information 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.