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## MEMORANDUM

May 21, 2024

TO: TRIBAL HOUSING CLIENTS

FROM:  ED CLAY GOODMAN AND CARI L. BAERMANN  
HOBBS, STRAUS, DEAN & WALKER, LLP

RE: ***HUD Tribal Intergovernmental Advisory Committee Meeting***

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On May 14–16, 2024, the United States Department of Housing and Urban Development (HUD) held an in-person Tribal Intergovernmental Advisory Committee (TIAC or “Committee”) meeting in Washington, D.C. The TIAC held a Tribal Caucus on May 14, 2024, followed by two days of meetings with HUD representatives on May 15–16, 2024. Below is a summary of the TIAC meetings.

### **I. First Day of HUD TIAC Meeting—Tribal Caucus**

Heidi J. Frechette, Deputy Assistant Secretary (DAS) for HUD’s Office of Native American Programs (ONAP) and Jacqueline Pata, TIAC Co-Chair and First Vice President of the Central Council of Tlingit and Haida Indian Tribes of Alaska, gave opening remarks at the Tribal Caucus. DAS Frechette and Jad Atallah, Director of ONAP’s Office of Performance and Planning, attended most of the Tribal Caucus meeting.

Various tribal leaders then discussed a number of topics, including planning their approach to raising various tribal issues and concerns with HUD during the TIAC meetings. Below is a brief overview of the topics that were discussed.<sup>1</sup>

- The HUD budget, funding for tribal housing, and the federal appropriations process
- HUD grants: how HUD can streamline the application process, simplify the notice of funding opportunity format, and consolidate the reporting process for multiple grants
- Implementation of presidential executive orders to respect tribal self-determination
- Build America Buy America Act (BABA) and its impact on tribes
- The burden of housing development costs
- Homeownership challenges and the unaffordability of homeownership

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<sup>1</sup> These topics are discussed in greater depth later in this memorandum.

## II. Second Day of HUD TIAC Meeting—Meetings with HUD

Acting Secretary of HUD Adrienne Todman, HUD Office of Native American Programs (ONAP) Deputy Assistant Secretary Heidi Frechette, Principal Deputy Assistance Secretary (PDAS) of the HUD Office of Public and Indian Housing (PIH) Richard Monocchio, TIAC Co-Chair and First Vice President of the Central Council of Tlingit and Haida Indian Tribes of Alaska Jacqueline Pata, TIAC Co-Chair and Council Member of the Oglala Sioux Tribe Tyler Yellow Boy, and Gulkana Village Elected Official Teri Nutter gave opening remarks.

### A. General topics

The TIAC members talked about the successes that tribal housing programs have accomplished this year, as well as the challenges that tribes still face. Acting Secretary Todman noted that HUD is focused on created sustainable programs and efforts, so that funding increases and other accomplishments continue to occur in the coming years.

### B. Housing Funding and Programs

#### 1. HUD Budget

The TIAC held a discussion on the HUD budget and funding for tribal housing. As we have discussed in prior memoranda, in March 2024, the President signed the fiscal year (FY) 2024 appropriations package (H.R.4366—Consolidated Appropriations Act, 2024). The appropriations package includes a significant amount of funding appropriated to Native American and Native Hawaiian housing programs compared to FY 2023, including \$1.1 billion appropriated for the Indian Housing Block Grant (IHBG). Some tribal leaders noted that even though tribes received \$1.1 billion, large fluctuations in funding each fiscal year make it difficult for tribes to plan long-term projects. They also advocate that the FY 2024 \$1.1 billion for IHBG should be considered the baseline for tribal housing appropriations going forward.

Mr. Atallah remarked that the TIAC's advocacy efforts and budget recommendations played an instrumental role in convincing Congress to increase the appropriations for the IHBG in FY 2024. He noted that Congress seemed particularly persuaded by the argument that the IHBG funding currently constitutes a significantly smaller percentage of HUD's budget than it did in previous years. In 2001, 2.5% of the \$26 million HUD budget was set aside for tribal housing. Today, the tribal housing funding makes up only 1.17% of the HUD budget. Mr. Atallah remarked that Congress was receptive to the argument that the percentage of HUD's budget devoted to tribal housing should be increased out of equity and fairness. He encouraged tribes to make this argument each year. Mr. Atallah also noted that Congress settled on an amount of \$1.1 billion for IHBG appropriations because that is approximately equivalent to the 1998 IHBG funding amount adjusted for inflation. Tribes have a strong argument that the IHBG amount should be adjusted to keep pace with inflation each year.

However, Mr. Atallah commented that there is little chance that the FY 2025 Indian housing budget will be at the same level as the FY 2024 budget. On March 11, 2024, the President released his FY 2025 budget request ("Budget Request"), including a proposed \$820 million for FY 2025

IHBG funding. The decrease in FY 2025 funding compared to FY 2024 is due in part to the fact that the FY 2025 discretionary budget (which includes HUD funding) is capped at roughly FY 2023 enacted levels by the spending limits set by the Fiscal Responsibility Act of 2023 (P.L. 118-5) (“FRA”). As a consequence, the President cannot request significant increases for discretionary programs without offsetting the increases with cuts elsewhere. Mr. Atallah noted that the FRA effectively set the FY 2025 budget in stone, with little room for tribes to advocate for higher IHBG amounts. Acting Secretary Todman added that all of the HUD departments were restricted by the FRA, not just funding for tribal housing.

In advocating for FY 2026 appropriations and other future funding, Mr. Atallah recommended that tribes continue to emphasize the impact that the increased FY 2024 IHBG funding will have in tribal areas. He remarked that providing specific details and stories about the impact of the FY 2024 funding increase humanizes it for Congress and drives home the point that tribes will use the funding to benefit tribal members and communities.

## *2. Reporting requirements*

The technical advisor for the Rosebud Sioux Tribe commented on some of the challenges that Tribally Designated Housing Entities (TDHEs) face in applying for and implementing HUD grants. She noted that TDHEs often have limited time, funding, and capacity, so the onerous application and reporting processes place unreasonable burdens on tribes and TDHEs. A couple of tribal leaders added that HUD’s grant reporting process is complex and time-consuming. Additionally, if a TDHE applies for multiple grant programs, that leads to more application processes, compliance requirements, and reporting that the TDHE must manage with limited staff. That in turn often forces TDHEs to either choose not to apply for certain grants or to increase their staff and provide larger salaries.

A number of the tribal leaders therefore recommended that HUD consolidate the reporting requirements for various HUD grants so that TDHEs only need to submit one report for all grants and do not have to do reports for each HUD grant. A consolidated grant reporting system would drastically reduce the time that TDHEs must spend on submitting reports. Acting Secretary Todman responded that HUD will consider what statutory authority it has to consolidate reporting requirements. As a follow-up, Mr. Atallah recommended that the TIAC create a letter to HUD covering the TIAC’s concerns with numerous reporting requirements for different grants, with a recommendation to HUD on options for addressing the issues moving forward.

## **C. Implementation of Executive Orders**

The TIAC members held a discussion on how to utilize recent executive orders to advocate for tribal housing initiatives. On December 6, 2023, President Biden signed [Executive Order \(EO\) 14112](#), on Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self Determination.

Anthony “Morgan” Rodman, Senior Policy Advisor for Native Affairs for the White House Domestic Policy Council, spoke about the White House’s efforts to implement EO 14112. EO 14112 discusses the federal focus on breaking down barriers to accessing and utilizing federal

funding. As part of that effort, the federal government has created an Access to Capital Clearinghouse website ([www.bia.gov/atc](http://www.bia.gov/atc)) that will be a one-stop shop for accessing federal funding. This Access to Capital Clearinghouse website will cover all funding for which tribes are eligible. The White House Council on Native American Affairs (WHCNAA) will be operating that Access to Capital Clearinghouse website.

Mr. Rodman commented that EO 14112 identifies chronic shortfalls in funding for tribes through the federal obligation to tribes. After engaging and consulting with tribes, the White House Office of Management and Budget (OMB) and the Domestic Policy Council will issue guidance to federal agencies on how to meet the federal government's trust responsibilities to tribes. Agencies must report their findings on how they will meet tribal needs to OMB by May 2025. OMB and the Domestic Policy Council will then make recommendations to the White House on what federal agencies need to do to meet their trust obligations to tribes.

The tribal leaders discussed a number of concerns that tribes face in engaging with federal agencies. One concern that a few of the tribal leaders raised involves tribal data. EO 14112 states that the federal government will "respect Tribal data sovereignty and recognize the importance of Indigenous Knowledge by, when appropriate and permitted by statute, allowing Tribal Nations to use self-certified data." EO 14112 § 5(a)(vii). Several tribal leaders commented on a number of issues that tribes face regarding data. They remarked that one of their concerns is that the census data collected by the U.S. Census Bureau ("Census Bureau") on the number of Native Americans and Alaska Natives is inaccurate, leading to significant undercounting of Native Americans and Alaska Natives in their tribes. These tribal leaders noted that their tribal enrollment numbers are significantly more accurate than any census data. A few tribal leaders also highlighted specific experiences they have had with the Census Bureau surveyors that have contributed to the undercounting, including situations in which only a portion of the Census Bureau surveyors actually arrive to conduct the census surveys.

In response to certain tribal leaders' comments on the undercounting, Acting Secretary Todman directed HUD to research the factors that are contributing to the undercounting and to determine what HUD can do to remedy it. She also noted that HUD is seeking tribal feedback on how certain tribal leaders would like the data self-certification process to be implemented. The TIAC decided to continue discussions about how to remedy undercounting going forward.

A second concern involves federal agencies' conflicting requirements for tribes. The technical advisor for the Rosebud Sioux Tribe asserted that various federal agencies often require tribes to enact separate homeownership or eviction ordinances for each separate federal agency that provides funding for housing development and operation. Additionally, the federal agencies require different and conflicting provisions in those separate ordinances. She recommended that the federal agencies coordinate their requirements, so that tribes would only need to pass one ordinance that would be sufficient for each federal funding agency's requirements.

#### **D. Build America Buy American Act (BABA)**

BABA was enacted on November 15, 2021 and establishes a domestic content procurement preference ("Buy America Preference," or "BAP") for Federal infrastructure programs. BABA

requires HUD to ensure that none of the funds made available for infrastructure projects 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, TDHEs, and other tribal entities (collectively “Tribal Recipients”) involving infrastructure projects.

On May 14, 2022, HUD published a one-year general applicability public interest waiver (“Waiver”) of the BAP in connection with HUD funding provided to Tribal Recipients. On May 30, 2023, HUD published a [notice \(“Extension Notice”\)](#) extending the Waiver until May 23, 2024. On May 10, 2024, HUD released a new notice that proposes to extend the expiration of the waiver until **September 30, 2024**. Comments on the waiver extension are due by **June 9, 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.

The technical advisor for the Cook Inlet Housing Authority opened the discussion about BABA. He noted that one of the main concerns for many tribes is the timing of the implementation BABA. He argued that BABA’s apparent goal of boosting the American infrastructure industry in such a short time frame is unattainable and places unreasonable burdens on low income communities. BABA will drastically increase housing costs, making it even more difficult for low income families to afford housing and therefore exacerbating the current housing crisis.

The Cook Inlet Housing Authority technical advisor recommended that HUD make efforts to minimize the impact on those who will struggle with the impact of BABA the most. Some tribal leaders at the TIAC advocated for a blanket waiver of BABA applicability for tribes or at the very least for any affordable housing projects. Other tribal leaders stated that tribes are looking to HUD as a federal partner to extend the time during which BABA does not apply to tribes, to give tribes more time to figure out how to minimize the impacts of BABA on tribal communities. They also advocated that HUD should work with other federal agencies to further extend the waiver of BABA applicability on tribes. Mr. Atallah responded that HUD will seek to consult with other agencies, but the OMB has indicated that it opposes interagency coordination. Instead, OMB intends for each agency to independently develop its own standards and justifications.

Because of the significant burden BABA will place on tribes, certain tribal leaders asked that HUD issue a waiver to delay the application of BABA until HUD has conducted more research on how BABA will affect tribes, similar to the approach that HUD has taken for other grantees. For example, on November 15, 2023, HUD published a [waiver](#) delaying the application of BAP requirements for Pacific Island territories for fifteen months.<sup>2</sup> That waiver states that HUD issued it so that HUD would have the opportunity to collect and analyze evidence on supply chains, costs, and impacts related to the application of BAP on Pacific Island territories. Acting Secretary Todman responded that HUD and other federal agencies are already in the midst of collecting data on how BABA will impact various communities. HUD would like more evidence from tribes on

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<sup>2</sup> U.S. Dep’t of Housing and Urban Dev., Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Pacific Island Territory Recipients of HUD Federal Financial Assistance: Final Notification (Nov. 21, 2023).

the impact of BABA so that HUD can make a stronger argument that tribes should be exempt from it.

Mr. Atallah provided an overview of the efforts that HUD has made over the last year to convince OMB to extend the waiver deadline for tribes. He commented that HUD has fought hard on behalf of tribes, but everything indicates that the proposed waiver extension to September 30, 2024 will be the last extension that OMB approves. OMB had indicated that it would approve that waiver extension solely so that HUD could develop guidelines and trainings for tribes and that OMB expects tribes to be in full compliance with the BABA requirements by October 1, 2024. Because of that waiver extension, BABA only applies to new grants that HUD obligates after October 1, 2024, which will likely include the FY 2024 IHBG formula grant, the FY 2024 IHBG competitive grant, and the FY 2024 Indian Community Development Block grant (ICDBG).

Mr. Atallah also discussed some of the arguments that HUD has made to OMB to exempt HUD funding provided to TDHEs from BABA. One such argument is that OMB should provide the same exemption for tribal housing funding that it provides to tribal funding provided through the U.S. Department of Health and Human Services (HHS) and the U.S. Department of Interior (DOI). HHS and DOI funding for tribes is provided through self-governance compacts and contracts. Mr. Atallah commented that OMB has interpreted compact and contract funding as not qualifying as FFA (federal financial assistance) and therefore as not subject to BABA. Mr. Atallah stated that HUD unsuccessfully attempted to argue that tribal housing grants should similarly be considered to not qualify as FFA because NAHASDA is effectively a self-governance act that allows tribes to implement housing programs consistent with the policies of self-determination. OMB has thus far rejected that argument and made it clear that it considers FFA as including tribal housing grants.

Mr. Atallah also commented that HUD shared all of the tribal advocacy letters it received with OMB, which significantly assisted HUD in securing OMB's approval of the waiver extensions. He remarked that it appears unlikely that OMB would agree to provide a full tribal exemption from BABA, but that OMB *may* be receptive to allowing a waiver for affordable housing. However, Acting Secretary Todman remarked that that will be a difficult argument to make, given that OMB is determined to strictly comply with the BABA statute. She also emphasized that OMB is the entity that will decide whether tribes will be exempt from BABA, not HUD.

Mr. Atallah noted that HUD has created an online portal through which TDHEs can submit waiver requests. HUD will review any waiver requests first and then must submit the waiver requests to OMB for its final approval. Mr. Atallah remarked that HUD will review the waivers as quickly as possible to minimize any delays in the waiver process. However, the BABA statute itself creates a long waiver process. It requires OMB to publish any waiver requests in the federal register with an opportunity for public comments. After that comment period, OMB must then approve and publish the waiver before it would be effective.

Ms. Nutter asked whether BABA would apply to downpayment assistance that tribes provide to tribal members. Another tribal leader asked whether there will be any federal committee that will act as an oversight body to ensure that contractors are not price-gouging tribes when BABA

goes into effect. Mr. Atallah responded that HUD will address those questions through guidance in the coming year. Another tribal leader asked whether BABA would apply to each specific procurement or whether it would apply per project. Mr. Atallah commented that HUD will provide a small grants waiver if the total cost of the project is equal to or less than the simplified acquisition threshold at 2 CFR 200.1, which is currently \$250,000. The total cost of the project includes materials, labor, and all other costs. That waiver applies to projects as a whole, not individual procurements all related to the same project. In order to determine whether a procurement falls under the \$250,000 threshold, HUD will review the procurement to determine whether it is a single isolated procurement, or whether that procurement is related to a project for which there are other procurements. If the cost of multiple procurements related to the same projects is over \$250,000, HUD will treat all procurements as one combined procurement.

## **E. Costs and Challenges of Housing Development**

Bobby Yandell, Tribal Representative of the Choctaw Nation, led a discussion covering the costs of housing development. He remarked that costs of development for many projects have almost doubled in the last ten years. A couple of tribal leaders asserted that it is significantly more expensive to build homes with federal funding than it is with non-federal funding. They noted that while tribes have more funding now because of the FY 2024 IHBG grant, that funding will not go as far because of the high costs of building homes with federal funding.

Mr. Yandell described a couple of factors that contribute to the higher costs for federally funded projects. First, he noted that the procurement process for federally funded projects is often more expensive because the formal bidding process required by 2 CFR Part 200, prevents tribes from being able to negotiate bid prices. Mr. Yandell stated that being able to negotiate the bid would allow tribes to significantly drive down the costs of the construction contracts.

Second, Mr. Yandell commented on the high labor costs of federally funded contracts. He stated that many contractors have figured out how to manipulate the procurements requirements for tribes to be able to demand higher costs from tribes. Contractors often charge tribes more in order to have to comply with federal procurement and construction requirements. NAHASDA Section 104(b) requires tribes and TDHEs to apply prevailing wage to all laborers and technicians employed in the development of affordable housing and all mechanics and maintenance workers employed in the operation of affordable housing. These rates are generally determined by the Secretary of Labor, under the Davis-Bacon Act (40 U.S.C. 3141 et seq.). If a tribe adopts a law or regulation that ensures payment of a tribally determined prevailing wage rate, the Davis-Bacon or HUD-determined prevailing wage rates do not apply. However, if a tribe has not adopted such a law, the Davis-Bacon wage rates can cause the cost of the contracts to increase significantly.

A couple of the tribal leaders recommended that HUD conduct studies comparing the costs of building a house with HUD funding to the costs of building a house with non-federal funding. They also recommended that HUD consider what it can do to help lower the costs of building homes with federal funding. PDAS Monocchio responded that HUD will examine its policies and requirements to determine which of those are contributing to the increase in costs. Solomon Greene, PDAS for HUD Policy Development and Research (PD&R), asked tribes to submit feedback on whether there are any NAHASDA-specific requirements that are contributing to the

increased cost of development. TIAC members responded that they will address that question in further TIAC discussions.

Other HUD staff noted that HUD is focusing on a couple of different methods to reduce the costs of development. For example, HUD is developing programs to support manufactured housing, as it is often a more cost-efficient means of developing housing. Tribes responded that manufactured and modular housing is useful but often fails to meet tribal needs, particularly because the manufactured housing quality is frequently sub-standard. The also remarked that manufactured housing is not and should not be considered as the end-all solution, given that manufactured housing does not last as long as stick-built housing.

PDAS Monocchio highlighted that the HUD code (“HUD Code”) is the only national code that regulates manufactured housing. HUD is already working on updating that HUD Code. PDAS Greene noted that the current HUD Code has different construction standards for the different geographical regions across the nation. As an outcome of the conversation on manufactured housing, the TIAC members decided to work with PD&R on submitting tribal comments on the HUD Code as it relates to manufactured housing. HUD staff stated that HUD will focus on what can be done to increase and improve the regulation of manufactured housing.

PDAS for HUD’s Community Planning and Development Marion Mollegen McFadden asked whether tribes have a concern that using manufactured housing, which is built in industrial areas, takes jobs away from tribal communities. Several tribal leaders responded that that is a concern, even though there are benefits to using manufactured housing.

A number of the tribal leaders also discussed the importance of infrastructure in tribal communities, noting that tribes need more funding for infrastructure and less barriers in developing infrastructure. Acting Secretary Todman asked what access to infrastructure funding would look like for tribes and what barriers tribes face in accessing that funding. A few of the tribal leaders responded that tribes can and do receive some funding through the U.S. Department of Transportation (DOT) to develop tribal roads. However, most of the funding is going to states. These tribal leaders commented that some states are unwilling to allocate any infrastructure funding for tribes and have often already developed plans for use of those funds that do not include any intention of supporting tribal areas.

Some of the tribal leaders discussed other barriers that tribes face in accessing and using infrastructure funding. One significant barrier that they noted is the limited amount of land available to some tribes for tribal infrastructure. They noted that the geology of many rural tribal areas, such as lava fields and tidal flooding, severely limits the amount of land available for tribal housing. Additionally, tribes need to use grant funding to address these geological issues, diminishing the funding available to actually build the homes. Other tribal leaders noted that federal agencies often impose grant requirements that severely limit the amount of land on which tribes can build housing. For example, an attendee noted that the U.S. Department of Agriculture (USDA) has refused to allow the Rosebud Sioux Tribe to build homes on certain land because it is prime farm land, severely limiting the amount of land available for building homes in a heavy farming area.



## F. Homeownership Challenges

### 1. Insurance Costs

Along with discussing the high costs of developing homes, the TIAC also discussed the homeownership challenges that tribes face. Glenn Ellis, Jr., Council Member, Makah Indian Tribe, Neah Bay, Washington, noted the high and continually rising cost of insurance, which has caused some tribal members to face foreclosure because of being unable to afford the insurance. Mr. Ellis stated that tribes are looking for HUD's help in driving down insurance costs.

Sarah Edelman, DAS of HUD's Single-Family Homes, responded that HUD has heard about the high costs of insurance from all communities across the nation. HUD is investigating what it and other federal agencies can do to address the issue, but HUD has not yet discovered an immediate solution. DAS Edelman remarked that HUD intends to have more conversations with insurance providers and tribal leaders on possible solutions. PDAS Greene noted that one of the issues driving up the costs is the impacts of natural disasters on housing. HUD is collaborating with the U.S. Federal Emergency Management Agency (FEMA) to use FEMA's data on exactly how natural disasters are damaging housing. HUD is also considering allowing home insurance to be an eligible activity for IHBG funding and is seeking tribal feedback on this change.

Several of the tribal leaders and HUD staff also discussed the challenges that tribes and tribal members face in finding insurance providers that are willing to provide insurance coverage of tribal homes. Many insurers refuse to provide insurance for certain tribal homes, either because the insurance companies consider the homes to be too high of a risk or because the homes are too rural. The lack of insurance coverage limits the financing options available to tribal members, which presents a further barrier to tribal members being able to attain homeownership.

### 2. Appraisals

The TIAC members also held a discussion over problems with home appraisals. Several tribal leaders commented that appraisers often provide limited transparency in the appraisal standards, leading to inconsistent and arbitrary appraisals. A few of the tribal leaders also noted that the limited number of appraisers available in rural tribal areas often forces tribes to fly in appraisers from urban areas, which drives up the costs of appraisals.

To address the issues with inaccurate or unfair appraisals, DAS Edelman noted that the HUD has created a Reconsideration of Value (ROV) process. Under this process, if the appraiser values a home for lower than expected, known as an "undervaluation", a buyer or seller can appeal the appraiser's decision by asking the lender to request a ROV. An ROV allows a buyer or seller to challenge an appraisal as inaccurate or unfair, and the appraiser must then respond to areas that the buyer or seller flag. More information is available on HUD's [Reconsideration of Value website](#). DAS Frechette noted that in developing the new Section 184 regulations, HUD is also considering other validation tools outside of appraisals.

## **G. Policy, Development, and Research (PD&R)**

The tribal leaders held a discussion of their requests for HUD on policy, development, and research. A few of the tribal leaders recommended that HUD conduct research on the obstacles caused by TDHEs providing low-income housing without receiving adequate funding to cover the operating costs of providing that housing. PDAS Greene stated that HUD will do research on the possibility of providing more funding for operating expenses and whether this is something that HUD has the authority to provide.

PDAS Greene provided an overview of the HUD Office of PD&R. He noted that HUD develops a number of research agendas, such as a multi-year learning agenda focused on long-term research. PD&R also conducts a learning agenda supplement, which is a mid-point review to ensure that the multi-year learning agendas reflect HUD's ongoing research, data, and evidence-building needs. PDAS Greene noted that HUD's research budget is only \$10 million, which limits HUD's ability to conduct tribal-specific research studies.

HUD is currently working on the HUD Learning Agenda FY 2022-2026, which it must submit to Congress for review and approval. HUD has created specific questions for tribes for its Learning Agenda FY 2022-2026, which is attached to this memo. HUD would like tribal feedback on what areas and data HUD should focus on in tribal areas.

## **III. Third Day of HUD TIAC Meeting—Meetings with HUD**

Ms. Nutter and DAS Frechette opened the third day of the TIAC and gave opening remarks.

### **A. Funding Opportunities**

#### *1. Access to Capital and Grants Generally*

TIAC members held a discussion on a number of issues that tribes face in applying for funding opportunities and accessing capital. TIAC members also discussed actions that HUD is taking to remedy the funding application processes and ability of tribes to access capital.

A number of tribal leaders commented that the grant application process for many federal grants is complex and burdensome. These tribal leaders noted that while TDHEs are technically eligible for many grants, the grant requirements and rating factors often effectively preclude TDHEs from being able to meet the eligibility requirements for the award. They asked that HUD look at all of its general grants for which tribes are eligible and consider ways to remove the criteria that unfairly excludes TDHEs from being competitive for those grants. These tribal leaders also commented that TDHEs should be able to provide input on the notice of funding opportunity (NOFO) requirements for any HUD grants before HUD actually publishes the NOFO. Mr. Atallah responded that HUD is currently working to simplify and improve the NOFO format. To begin that process, HUD will be creating a NOFO pilot program to reduce the length and complexity of the NOFOs, alter the grant criteria and scoring structure to better fit tribes, and then assess how those changes will impact tribes. TIAC members also discussed two HUD grants in particular for

which tribes are eligible: the Choice Grant and the Preservation and Reinvestment Initiative For Community Enhancement (PRICE) Grant.

## 2. *Choice Grant*

There are two Choice grants for which tribes and TDHEs are eligible: the Choice Planning Grant and Choice Implementation Grant. The Choice Planning Grant NOFO was posted to [Grants.gov](https://www.grants.gov) on April 9, 2024 and announced up to \$10 million for Planning Grant awards. The maximum grant award is \$500,000. Applications are **due June 10, 2024**. The Planning Grant provides funding for a two-year planning process for community revitalization. TDHEs can use it to focus on the redevelopment of NAHASDA-assisted units. The Planning Grant helps provide a pathway for applicants to then receive the Choice Implementation Grant.

The Choice Implementation Grant supports those communities that have undergone a comprehensive local planning process and are ready to implement a plan to redevelop the neighborhood. The FY 2023 Implementation Grants provided approximately \$259 million in funding available for awards of up to \$50 million each. The FY 2024 Choice Implementation Grants funds have been added to the FY 2023 Implementation Grants competition, so there will be no separate FY 2024 Choice Neighborhoods Implementation Grants NOFO. PDAS McFadden remarked that the Choice grant can be used to rehouse existing communities that are in disaster prone areas. More information is available at <http://www.HUD.gov/cn>.

Mr. Atallah remarked that HUD recognizes that TDHEs are frustrated with the Choice grants. However, he noted that there are many aspects of the Choice grants that HUD cannot remedy because those aspects are statutory requirements. He also noted that the Choice grants will be a better fit for some tribes than others, but HUD will do what it can to assist tribes in applying for and using the grant.

## 3. *PRICE Grant*

On February 28, 2024, HUD issued a [NOFO](#) which appropriates \$225 million in grant funding for the PRICE competition. PRICE supports communities in their efforts to maintain, protect, and stabilize manufactured housing and manufactured housing communities (MHCs), as well as the preservation and revitalization of manufactured housing and eligible MHCs. Tribes and TDHEs are eligible to apply, and at least \$11 million of the available funding is intended for tribal communities. Tribes could receive more than \$11 million. For the PRICE main grant, the minimum funding for a grant is \$500,000 and the maximum funding is \$75 million. There is also a PRICE Replacement Pilot grant, which provides grantees with a minimum funding of \$5 million and maximum funding is \$10 million.

The PRICE grant cannot be used for stick-built housing. There is a match requirement for the PRICE Replacement Pilot grant, requiring applicants to match 50% of the funding. There is no match requirement for the PRICE main grant, but applicants are awarded additional points if they are able to match the PRICE grant funding. Mr. Atallah remarked, similar to the Indian Community Development Block Grant Program (ICDBG) grant, the PRICE grant is intended to preserve housing, except the focus is on manufactured housing.

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](#) and can email HUD at [price@hud.gov](mailto:price@hud.gov) to find out more about the PRICE grant. Grant applications are due **June 5, 2024**.

#### 4. ICDBG Grant

On May 15, 2024, HUD published the ICDBG NOFO, with approximately \$70 million available to eligible tribes and TDHEs. Applicants have until **July 15, 2024**, to submit applications via [Grants.gov](#).

### B. Ginnie Mae

Sam Valverde, Acting President of Ginnie Mae, provided an overview of Ginnie Mae, which is a government-owned corporation within HUD. Ginnie Mae is short for Government National Mortgage Association, and it is designed to expand affordable housing by guaranteeing federally insured housing mortgages, thereby lowering financing costs for those mortgages. It does that through guaranteeing to investors the on-time payment of mortgage-backed securities (MBS) even in the case of mortgage defaults or foreclosures. More information can be found [here](#). Mr. Valverde noted that Ginnie Mae intends to work more closely with tribes and is seeking feedback on how Ginnie Mae can provide greater support for tribal communities. Numerous tribal leaders commented that native community development financial institutions (CDFIs) continually struggle with limited access to capital, so anything that Ginnie Mae could do to increase funding for CDFIs would be useful.

### C. Other Housing Issues

TIAC members remarked on some of the issues that tribes face in dealing with use and manufacture of illegal drugs in tribal housing. A few of the tribal leaders asked whether HUD has developed any safety levels for fentanyl and other drug homes. Warren Friedman, Senior Advisor for HUD's Office of Lead Hazard Control and Healthy Homes (OLHCHH) responded that HUD uses U.S. Environmental Protection Agency (EPA) guidance to determine safety levels for drugs in homes. Additionally, if any tribes have feedback or specific questions about drug testing and cleanup standards, PDAS Greene encouraged tribes to send them to PB&R. Mr. Friedman noted that OLHCHH will coordinate with EPA to provide guidance specific to cleaning up homes contaminated by drug use instead of drug manufacturing labs.

### D. Future TIAC and HUD Meetings

The TIAC discussed holding the next in-person meeting in the fall of 2024. HUD staff noted that will likely be holding an asset-building conference November 20–21, 2024.

***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 be reached by phone at 503-242-1745.