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MEMORANDUM

June 7, 2024

TO: TRIBAL HOUSING CLIENTS

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

RE: ***NAIHC June 6, 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 June 6, 2024, as well as updates on other housing matters.

I. NAIHC Legislative Committee

NAIHC Legislative & Program Aide Blythe McWhirter and NAIHC Finance and Operations Manager Ryan Edwards facilitated the Legislative Committee Meeting.

a. Budget and Appropriations

Ms. McWhirter provided an update on the Fiscal Year (FY) 2025 appropriations. Ms. McWhirter remarked that on March 11, 2024, the President released his FY 2025 Budget Request ("Budget Request"), including his proposal for the U.S. Department of Housing and Urban Development (HUD) in FY 2025. As we have discussed in prior memoranda, 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 lower across the board than the FY 2024 Budget Request (and below the FY 2024 enacted levels as well).

Overall, the President requests \$1.05 billion for tribal housing programs, which is \$287 million (21%) below FY 2024 enacted levels. This cut comes almost entirely from the Indian Housing Block Grant (IHBG), which the Budget Request propose to decrease by \$290 million (26%). The FY 2025 Budget Request would keep funding flat for every other account with the exception of Section 184 Indian Housing Loan Guarantee ("Section 184"), which would receive a \$500,000 (33%) increase. 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 discussed one of NAIHC's advocacy points regarding increasing funding for tribal housing. The 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 the IHBG funding to \$1.11 billion, which equates 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 is therefore advocating that the funding be increased by \$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 must pass the FY 2025 appropriations by September 30, 2024 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 and has set an ambitious appropriations drafting schedule. Representative Cole is an enrolled member of the Chickasaw Nation and has frequently introduced and supported pro-tribal legislation. Ms. McWhirter remarked that Chairman Cole has said that he will strive to ensure that there will be no decrease in funding for tribes. However, that may be a difficult promise for him to keep, given the tough appropriations negotiations that will occur. NAIHC will be continuing to meet with Congressmembers to advocate for increased appropriations for 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. Ms. McWhirter commented that NAIHC is continuing to set up meetings with HUD officials and various Congressmembers to advocate for the NAHASDA reauthorization bill.

One of the participants remarked on Representative Maxine Waters' (D-CA) ongoing efforts to obstruct the NAHASDA reauthorization. Representative 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), and withholds NAHASDA funding from the Five Tribes unless they provide housing assistance to Freedman descendants. Representative Waters has repeatedly attached language that adversely impacts the Five Tribes involved in the Freedman issue to each NAHASDA reauthorization bill. Representative Waters is the Ranking Member of the House Financial Services Committee, which must sign off on such legislation. As a result, she has effectively blocked consideration of those bills in the House. Ms. McWhirter stated that NAIHC is actively meeting with other Congressmembers to seek a solution to Representative Water's opposition to NAHASDA.

c. Build America, Buy America Act (BABA)

The participants also discussed 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.

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, 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.

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).

Ms. McWhirter commented that Senator Murkowski and Senator Dan Sullivan (R-AK) sent a letter to the White House Office of Management and Budget (OMB) requesting a five-year waiver of the applicability of BABA on tribal housing. That letter can be found [here](#). In the letter, Senator Murkowski and Senator Sullivan note the significant challenges that tribal housing will face if forced to comply with BABA in 2024. Those challenges could include more difficulty in obtaining BABA-compliant resources in remote areas and a higher administrative cost resulting from needing to ensure that the materials are made in America.

One of the participants commented that HUD may be releasing guidance in the near future regarding other BABA waivers that might be available for tribal housing. For example, the BABA statute states that the BAP applies to infrastructure projects involving "buildings and real property[.]" Pub. L. 117-58 § 70912(5)(K). The participant commented that HUD is considering issuing a general waiver for construction of all public housing, based on the argument that construction of public housing does not qualify as "buildings and real property" under the BABA statute. The participant further commented that tribes should reach out to HUD to ensure that tribal housing is covered under any public housing waiver.

d. Tribal Interagency Advisory Committee

The participants also provided an update on the HUD Tribal Interagency Advisory Committee (TIAC). The TIAC is currently seeking nominations for future members of the TIAC. Selected nominees will serve a two-year term, beginning January 2025. Nominations are due by **June 7, 2024**. Nominations may be submitted to HUD electronically through the Federal eRulemaking Portal at www.regulations.gov. Further details can be found in this [Federal Register Notice](#). In determining who to select, HUD will take into consideration several factors, such as geographic location and size of Tribe. In order to be eligible, the nominee must be a duly elected or appointed Tribal leader or Tribal employee (employees of a Tribally Designated Housing Entity are not eligible). Selected nominees will serve a two-year term, beginning January 2025. Nominations are due by June 7, 2024.

e. Other Tribal Housing Legislation

The following are bills introduced in 2023 or 2024 that would benefit tribal housing but that have not yet been enacted.

Tribal Rural Housing Access Act (S.3906). Senator Elizabeth Warren (D-MA) introduced the Tribal Rural Housing Access Act bill. Under the Tribal Rural Housing Access Act, the U.S. Department of Agriculture (USDA) would be required to set aside five 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.

Native American Rural Homeownership Improvement Act (S.1941) ("NARHI Act"). The NARHI Act would provide \$50 million from the 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 Cole, Co-Chair of the Native American Caucus, have advocated strongly for the bill.

Tribal HUD-VASH Program (H.R.4155). The Tribal HUD-VASH program aims to codify a tribal housing initiative between the U.S. Department of Veterans Affairs (VA) and the HUD. This program pairs 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 ensure 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.

Tribal Trust Land Homeownership Act (S.70/H.R.3579). The Tribal Trust Land Homeownership Act (TTLHA) bill sets 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 sets 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 addresses 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 provide funding for Native CDFIs to expand outreach for the program to increase veteran participation. Additionally, the bill would adopt 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 amend 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 is intended to eliminate barriers to tribal infrastructure and economic development projects.

GSA Disposal Process Tribal Parity Act of 2024 (S.3564/H.R.7663). Senators Alex Padilla (D-CA) and James Lankford (R-OK) introduced the Senate version of the bill, and Representative Dusty Johnson (R-SD) introduced the House version of the bill. This bill would allow tribal

governments to participate in an existing process that allows the General Services Administration (GSA) to transfer surplus federal property to state and local governments below market value if those properties will be used for specified public purposes. The press release is [here](#). On May 22, 2024, the Senate Committee on Environment and Public Works ordered the bill to be reported without amendment favorably, clearing it for Senate Floor consideration.

f. Section 184 Loan Guarantee 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"). HUD's Office of Loan Guarantee (OLG) of the Office of Native American Programs (ONAP) is in the process of drafting a Section 184 Policy Handbook ("Handbook") to implement the final rule. On June 3, 2024, the OLG released three new proposed [draft sections](#) ("Draft Sections") of the Handbook. These three sections cover how the final rule will apply to servicers; lender applicants; types of program approvals; participation options and requirements; and other participants. Tribes may review the Draft Sections and submit comments by **June 13, 2024**.

g. Tribal Consultation on Annual Budget

HUD will virtually host its inaugural annual budget consultation on **June 14, 2024** from 1:00–3:30 P.M. EST. HUD intends for the consultation to provide a forum for nation-to-nation dialogue where Tribes can share their views and housing funding priorities with senior HUD officials to help shape HUD's FY 2026 budget request. HUD stated that it is also seeking ideas for legislative proposals. Individuals can register for the virtual consultation session [here](#).

h. 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 sends 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. Registration is now open. 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) or Cari Baermann (cbaermann@hobbsstrauss.com). Both may also be reached at 503-242-1745.