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MEMORANDUM

June 28, 2024

To: TRIBAL HOUSING CLIENTS

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

Re: ***Tribal Consultation: Annual Budget Consultation***

This memo reports on the National American Indian Housing Council (NAIHC) Legislative Committee and NAIHC Annual Convention, held in Hollywood, Florida (at the Seminole Hard Rock Casino and Resort) on June 24–27, 2024. Below is a summary of the Legislative Committee meeting, the plenary sessions, some of the key presentations, and other developments in housing matters.

I. NAIHC Legislative Committee

The NAIHC Legislative Committee met on Monday afternoon, June 24, 2024. The NAIHC co-chairs, Sami Jo Difuntorum (Siletz Tribal Housing Department Executive Director) and Sharon Vogel (Cheyenne River Housing Authority Executive Director) presided over the meeting. The turnout was very good with approximately 100 people present. The Committee meets once per month by Zoom, but meets in person in conjunction with various NAIHC events.

The first item was a presentation by Blythe McWhirter (Legislative and Program Aide for NAIHC) on the major legislative issues. NAHASDA reauthorization is the top legislative priority of NAIHC. NAIHC is working on both sides of the aisle, including working specifically with Congresswoman Maxine Waters about the Freedmen issue. So far, that issue has been a stalemate, but they are continuing to meet. The work on the Republican side of the aisle has been educational, since many Republican committee members do not have tribes in their districts and are not familiar with Indian tribes or Indian housing.

Next up was the FY 2025 appropriations. FY 2024 resulted in the highest appropriation amount for Indian housing in the history of NAHASDA (which was a 20% increase over the prior year). NAIHC has been treating that amount as the new baseline, and will not support any reductions in that amount. NAIHC argues that such levels are moving toward “equity” with other public housing programs.

Natasha John (NAIHC’s lobbyist) provided an update speculating on possible FY 2025 appropriations, which was mooted out by the news the next day that the House Appropriations Committee had released the FY 2025 bill for Transportation, Housing and Urban Development,

and Related Agencies Appropriations Act (THUD). The House THUD subcommittee then marked up the THUD bill on June 27, 2024. The THUD bill includes \$1.455 billion for Native American programs, which is an increase over both FY 2023 and FY 2024 funding and is also significantly higher than the Biden Administration’s budget proposal (which proposed a big reduction from FY 2024). There was some discussion at the subsequent plenary session that it was urgent that NAIHC members reached out to their delegation to ask them to support the THUD subcommittee appropriations amount.

For your reference, below is a chart showing the FY 2024 appropriations, the Biden Administration's budget proposal, and the recently released THUD appropriations bill:

Native American Programs	FY 2024	FY 2025 Request	THUD Bill
Tribal HUD-VASH	\$7.5 million	\$0	\$8 million
Indian Housing Block Grant (IHBG)	\$1.11 billion	\$820 billion	\$1.22 billion
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	\$1.5 million	\$2 million	\$2 million
Imminent threats to health and safety	\$5 million	\$5 million	\$5 million
Native Hawaiian Program			
Native Hawaiian Housing Block Grant (NHHBG)	\$22.3 million	\$22.3 million	\$22.3 million
Training and Technical Assistance	\$1 million	\$1 million	\$1 million

The discussion next turned to the Build America, Buy America Act (BABA). NAIHC and its partners are continuing to push for a full waiver of BABA for tribes and TDHEs. Senators Lisa Murkowski (R-AK) and Dan Sullivan (R-AK) wrote a letter to the White House Office of Management and Budget (OMB) asking for a five-year waiver, and NAIHC supported that letter. While the letter was Alaska-specific, the principles would apply across the board. The current extension of the temporary waiver expires on September 30, 2024.

NAIHC recently had a conference call with appropriations staff, asking for input and information from tribes on several programs. The first was the Homelessness Continuum of Care program. Congressional staffers want to know whether the tribes have been involved and whether there has been sufficient outreach. Second item was an interagency task force for expanding access to housing assistance programs. Again, Congress is looking for whether and how tribes have been contacted.

The next item was an update on the Tribal Interagency Advisory Committee (TIAC). Jacqueline Pata (1st Vice President, Central Council Tlingit & Haida Tribes of Alaska) gave the update. Some of the things discussed at TIAC will require legislation. There are three asks in the

appropriations arena. (1) That the FY 2024 funding be the new baseline; (2) Inflationary protections should be built into the appropriations process, so that the IHBG increases with inflation; and (3) Trying to put together data on “missed opportunity” costs for inadequate funding over the past couple of decades. Some other legislative changes that they are advocating: (1) Looking at streamlining environmental review and other bureaucratic requirements for construction of housing project (PDR has been asked to engage and provide data); (2) How to address barriers to homeownership in Indian Country, such as financing and insurance; (3) Self-governance Executive Order 14112 from Biden Administration (asking HUD for a list of programs heavily utilized by tribes to determine how to streamline the processes for accessing these programs, and determining whether changes will require legislation or advocacy at the regulatory level).

Ms. Pata also spoke about some of the efforts that TIAC has taken in the last year. One such effort was to send a letter to the U.S. Department of Health and Human Service (HHS) to advocate that tribal housing be eligible for HHS funding. Mr. Yandall spoke about a paper that TIAC drafted to address construction issues in tribal communities. The paper asked HUD to assist tribes in being able to use their funding as efficiently as possible by removing burdensome requirements and unfair procurement processes imposed on tribes.

There was also a discussion of the TIAC nomination process. TIAC is growing in influence. The nominations process just closed and it is important to figure out who the representatives are for your region in order to provide input and participate in the work that TIAC is engaging in.

One participant from Northern Circle Housing Authority (an intertribal TDHE from Northern California) gave an update on Indian housing in California. They are working together to create a NAHASDA-type housing program in California (funded with State dollars). The bill was passed last year by the California legislature but was ultimately vetoed by the Governor. If this works in California, they would like to see it replicated in other states as well.

Joanna Donohoe (South Dakota Native Homeownership Coalition) gave an update on legislative issues related to Native homeownership. There are three big homeownership bills that the Coalition is tracking. First is the USDA 502 relending, which would allow CDFIs to borrow Section 502 funding and then relending those to Native homebuyers. Senator Rounds has been working on legislation to create a permanent program for this approach (there is a currently a demonstration project on Pine Ridge and Cheyenne River, which has been very successful). There are two tracks: (a) authorizing the program to go forward as nationwide, permanent program; and (b) develop an ongoing appropriation for this program. Second is a bill specifically for Native Veterans. This would modify USDA’s current loan program for Native Veterans, which has not been working that well. The legislation would fix some of the problems. This bill has been included in a broader Veterans act and the likelihood of passage is strong. The third bill would streamline the BIA approval process for mortgage lending. It has been passed out of the Senate but has been held up in the House Natural Resources Subcommittee. This is the third attempt to get this bill passed.

II. NAIHC Plenary Session

The NAIHC plenary session was held on the morning of June 25, 2024. Thomas Lozano (NAIHC Chairman), Douglas Marconi (NAIHC Executive Director), and Sami Jo Difuntorum (NAIHC Vice-Chairperson) gave opening remarks.

a. Business Meeting

The NAIHC Business Meeting convened during the plenary session on June 25, 2024. At the Business Meeting, the NAIHC membership held elections for the NAIHC Chair, which has a two-year term. During the Business Meeting, the NAIHC members nominated three candidates for Chair: Bobby Yandall (Board Director of NAIHC and Executive Director of the Choctaw Nation); Kyle Prior (Executive Director of the Duck Valley Housing Authority of the Shoshone-Paiute Tribes); and Jeff Ackley, Jr. (Executive Director of the Lac du Flambeau Chippewa Housing Authority). The Business Meeting went into caucus in order to discuss the candidates. At the end of the voting period, Mr. Yandall was voted to be the next NAIHC Chair.

The NAIHC membership then took up and passed five resolutions sponsored by the Northwest Indian Housing Association (NWIHA) and the Seneca Nation Housing Authority. We describe each resolution and the actions taken below.

NWIHA Resolutions:

- A Resolution Regarding the Compilation of HUD-assisted Units Data

This resolution requests that ONAP "compile a report on the number of IHBG-funded units currently under management by tribes and TDHE's" to assist tribes and TDHEs in requesting additional funding to support tribal housing. One of the NAIHC members requested an amendment to replace the language "IHBG-funded units" with "NAHASDA assisted units as reported in the APR". The NAIHC members unanimously accepted and approved this amendment and the full amended resolution.

- A Resolution Regarding Appropriations for the Indian Housing Block Grant.

This resolution requests an increase in IHBG funding to 4% above FY 2024 enacted amounts. One of the NAIHC members requested that the resolution also add a specific dollar amount to which the funding should be increased, in addition to stating a percentage. The NAIHC members unanimously accepted and approved this amendment and the full amended resolution.

- A Resolution Regarding Build America, Buy America (BABA)

This resolution urges HUD and OMB to issue a permanent waiver of BABA applicability for tribal housing programs, or at the very least to waive BABA applicability until HUD conducts a feasibility study to determine the impacts that BABA will have on tribal communities. The NAIHC members unanimously accepted and approved this resolution.

- A Resolution Requesting that HUD Consult with Tribes Before Issuing Notices of Funding Opportunity (NOFOs).

This resolution urges HUD to consult with tribes before it issues a NOFO for affordable housing grants to ensure that the NOFOs do not include requirements that would preclude tribes from being able to successfully apply for the grants. One of the NAIHC members requested that the resolution be amended to state that this consultation would apply only for NOFOs for new programs or funding streams, not existing ones, so that the consultation does not slow down grant process

Seneca Nation Indian Housing Authority Resolution:

- A Resolution to Encourage and Expand Federal Home Lending Opportunities in New York and Maine.

This resolution seeks to encourage the removal of barriers to home lending in New York and Maine. In advocating for the resolution, the Seneca Nation Indian Housing Authority representative stated that there are not enough lenders in New York and Maine to provide loans to tribal members on the unique types of tribal land in New York and Maine (i.e., restricted fee land). He remarked that tribes need additional solutions to increase lending the tribal restricted fee land. The NAIHC members unanimously accepted and approved this resolution.

b. Impact of NAHASDA

NAIHC showed a virtual presentation by Jody Cahoon Perez (Executive Director of the Salish-Kootenai Tribal Housing Authority and NAIHC Board Member), and Bob Gauthier (former Executive Director of the Salish-Kootenai Tribal Housing Authority) on the importance of the NAHASDA reauthorization. Mr. Gauthier remarked on the success of initially passing NAHASDA in 1996, noting that NAIHC played a significant role in that effort. However, Mr. Gauthier also noted some of the unintended consequences of NAHASDA. He commented that the initial version of NAHASDA was drafted on the assumption that all tribes had the administrative capacity to implement NAHASDA programs. This assumption failed to recognize that the decreased administrative capacity of smaller tribes might limit their ability to implement the programs. However, Mr. Gauthier also observed that with NAHASDA's passage, tribes lost the ability to rely on HUD's management and support of housing development and operations. Mr. Gauthier noted that now under NAHASDA, tribes do not have a subsidy to run IHBG programs and often struggle to find enough funding to run their programs. In light of that struggle, Mr. Gauthier recommended that NAIHC focus on educating tribes on what they can do to help smaller TDHES build their administrative capacity and run their programs as efficiently. Mr. Gauthier also recommended that tribal leaders focus on collaborating and educating each other on how to develop tribes' self-governance capacity. He commented that having tribal leaders provide that education instead of HUD will allow it to have a greater impact in Indian country.

c. Keynote Speaker—Cherokee Nation Principal Chief Chuck Hoskin, Jr.

Chief Chuck Hoskin, Jr. (Cherokee Nation Principal) gave a key note speech on housing in Indian country. He remarked on the economic process that the Cherokee Nation has made, including in supporting tribal housing. However, he also noted that there is still significant need for housing for tribal members. Many tribal members still cannot afford rent or homeownership. Additionally, Chief Hoskin noted that HUD funding is not sufficient to meet tribal housing needs.

As a result, Chief Hoskin emphasized the importance of tribes using their own funding and economic develop to build and support tribal housing. He highlighted the Cherokee Nation's housing rehabilitation program through which the Cherokee provides funding to homeowners to help them repair their homes. The Cherokee Nation also has a special program that provides housing support and funding specifically for fluent Cherokee speakers, to help ensure that the native remains a part of their culture. Chief Hoskin also remarked on the Cherokee Nation's efforts to help all homeless individuals, regardless of whether they are tribal members.

Chief Hoskin then commented on the increase of NAHASDA funding for tribes. He recommended that while tribes can be appreciative of that increased funding, tribes should continue to advocate strongly for additional tribal housing funding and additional federal support for tribal housing. Chief Hoskin emphasized that Native Americans should advocate more strongly on their own ability to remedy the issues within tribal housing issues, and that they simply need federal funding to overcome the economic disparities caused by the centuries of the United States' treatment of Native Americans.

III. NAIHC Breakout Sessions

We attended a number of the breakout sessions at the Annual Convention and provide a summary of those below.

a. Tribal-HUD Veterans Administration Supportive Housing (T-HUD VASH)

Robin Thorne (RTHawk) and Brigid Korce (BeauxSimone Consulting) gave a presentation on Tribal-HUD Veterans Administration Supportive Housing (T-HUD VASH). This program serves veterans who are homeless or at-risk of homelessness. To receive T-HUD VASH support, the veterans must live on a tribal reservation or near a reservation (although some tribes have expanded their service areas quite far from the reservation so that they can serve as many tribal veterans as possible).

The original HUD-VASH program was created in 2008 and was not tribal-specific. It was developed in response to Vietnam-era veterans who were experiencing or faced the threat of homelessness. However, the HUD-VASH program was not effectively serving Native veterans. In fact, HUD-VASH program providers were turning away Native veterans on the mistaken understanding that Native veterans were only eligible for assistance under NAHASDA.

In response, Tribal leaders began advocating for a tribal program that would serve Tribally-enrolled veterans. The T-HUD VASH program was first enacted by Congress in 2015. It allowed

tribes and TDHEs to become eligible for the HUD-VASH subsidy program. The T-HUD VASH program rules created a hybrid of NAHASDA and HUD-VASH.

Initially, T-HUD VASH was treated just like a Section 8 voucher program. During the first two years of the program, HUD, working with tribes, realized that a Section 8 voucher type program did not work well with the way tribes/TDHEs administered their programs under NAHASDA. As a result, HUD eventually revised its rules to allow tribes/TDHEs to administer the T-HUD VASH in a way that works best with their program. Some tribes will use the T-HUD VASH subsidy to pay the entire rental amount. Some create a program with a cap of assistance. Tribes can now set the amount of the subsidy for the veterans. Veterans cannot pay more than 30% of their income, but tribes/TDHEs can set the rent calculation policy so that the veterans pay a lower percentage.

The T-HUD VASH is not truly a voucher program, because there is no longer a fixed formula for the voucher. Rather, it is a subsidy program through which the tribe/TDHE receives the funds and utilizes it for veterans' rental assistance in the best way possible as determined by the tribes. The subsidy approach allows T-HUD VASH recipient tribes/TDHEs to determine the amount of assistance they wish to provide for their veterans.

Some things are not eligible for T-HUD VASH: it cannot be used to pay security deposits and it cannot be used to pay for utilities separately (but if utilities are included in the price of the rent, it can be used for the rent in those circumstances).

Some of the initial problems that showed up with the T-HUD VASH program were that VA case managers were not available for each T-HUD VASH grant recipient. A case manager was necessary to get veterans approved to participate. It took a couple of years to make sure that there were sufficient VA case managers. VA also struggled with the "housing first/wait list" concepts as far as determining eligibility. It took several years of working with the VA and HUD so that they came to understand tribal housing programs.

The VA case manager is key to the process. Further, the program is intended to ensure that all the issues that the veteran are struggling with being addressed (unemployment, substance abuse, mental health). The VA requires a veteran to sign a Case Management Agreement. Housing stability is the central goal, and it can be the stand-alone reason that a veteran requires case management. Housing assistance through T-HUD VASH is maintained even if the veteran does not need the other services.

Some of the current challenges have grown out of tribes' and TDHEs' successful use of the program. First, there is a need to remove the current restriction preventing tribes/TDHEs from using the T-HUD VASH subsidy on FCAS units. This would open up thousands of additional units within tribal communities to be eligible for Native veterans. Second, there is a need for continuing technical assistance for recipients. Third, additional legislative changes are needed to create a universal voucher system. HR 4155: Tribal HUD-VASH Act of 2023, introduced by U.S. Representative Tom Cole (R-OK) in 2023, does establish such a universal voucher system. We have until the end of the year to get this bill passed.

b. Homebuyer Assistance: Down Payment Assistance and Mortgage Programs

Ed Clay Goodman and Cari Baermann gave a presentation on Homebuyer Assistance: Down Payment Assistance and Mortgage Programs. Tribes and TDHEs often create and operate their own mortgage loan or down payment assistance (DPA) program to help tribal members obtain homeownership.

Home loans (secured by a mortgage or deed of trust) are the main tool for buying a home. A home loan involves an individual or family borrowing money from a lender to pay the purchase price for the home. Lender usually requires the homebuyer to put up money towards the purchase price, which is known as the down payment. Lenders often require a borrower to provide up to 20% for a down payment, but this can vary based on the program.

Tribal members face additional hurdles to obtaining homeownership in Indian Country. It can be tough for tribal members to save up or borrow enough money, due to low employment rates in tribal areas, low credit scores of borrowers, and a limited number of lenders willing to lend in Indian Country, among other reasons. DPA programs assist tribal members in coming up with a 20% down payment. DPA programs are often structured so that a TDHE provides funding to the borrower for up to 20% of the purchase price as a down payment.

That DPA can be structured as an outright grant of funds, as a forgivable loan, or as a non-forgivable loan. Whichever way it is structured, it is best ensure that there is a mechanism to enforce the terms of the DPA if the homebuyer fails to comply. There are benefits and detriments to all three types of structures. For example, a DPA grant would involve a simpler process. In contrast, a DPA loan often involves additional steps and processes that can be time-consuming, such as a requirement that the loan be recorded. However, a loan is secured by a mortgage on the property, which might provide more protection of the TDHE's funds.

The documents typically recommended for operating a DPA program that involves providing DPA as a loan include the following:

- DPA program policy
- Loan agreement/promissory note
- Mortgage/deed of trust
- Right of first option to purchase agreement
- Primary residence affidavit
- Escrow instructions

A DPA program policy should specifically describe how the program works, the eligibility requirements, and the requirements with which homebuyers would need to comply once they receive the DPA. Additionally, each of the documents described above should carefully describe the requirements of the program and sufficient information for the documents to be recorded in a recording office, if applicable.

Enforcement of a DPA program's terms can be difficult regardless of whether a TDHE structures it as a grant or loan. Examples of how a homebuyer might default on the terms of a DPA program include failing to use the house as a primary residence, causing damages to the house, or

failing to keep house insured. If the DPA is structured as a grant, it can be difficult to enforce a breach of contract case against the homebuyer in the case of default. For example, a homebuyer might not have enough funds to repay the TDHE for the DPA if the homebuyer defaults on the DPA grant. On the other hand, if the DPA is structured as a loan, the only remedy is foreclosure.

Overall, providing DPA to a potential homebuyer can involve some risks, since there is a chance that a TDHE may not be able to recover its funds if the homebuyer defaults on the terms of the DPA. However, the benefits of assisting tribal members obtain homeownership can often outweigh the costs.

c. Accessing Federal Home Loan Bank Affordable Housing Program Funds

Representatives of the FHLBanks, including Catherine Sterba (Strategic Initiatives Manager), Rori Chaney (Community Investment Department Manager), and Alyssa Thunbern (Managing Director), gave a presentation on FHLBanks and how FHLBanks can benefit tribes.

The presenters stated that FHLBanks are not federal banks but are instead a system composed of eleven regional banks, each privately financed and owned by their members as cooperatives. The members are made up of banks, credit unions, CDFIs, and insurance companies. FHLBanks provides reliable funding to the member institutions (i.e., banks and credit unions) to increase and expand the members' availability of funds. The members can then provide those funds for residential mortgages and community development lending nationwide, including affordable housing and community development.

Some of the FHLBanks have down payment and closing costs assistance programs specific to Native Americans. One such program is a Tribal Nations Program in California, launched in 2023 with a \$1 million allocation. The program provides funding for training and technical assistance to tribes to apply for the FHLBanks' Affordable Housing Program (AHP) and federal and state affordable housing funding.

They also provided an overview of affordable housing programs and the homeownership set-aside down payment program. The FHLBanks have \$1 billion in available funds to award in FY 2024 through the various programs. The AHP General Fund is a flexible source of gap funding designed to help develop affordable owner-occupied and rental housing for very low-income and moderate-income families and individuals. It may be used to fill funding gaps created by cost overruns. It can also be layered with other funding, such as NAHASDA, USDA, ICDBG funding. No interest accrues for these loans. There is no expectation of repayment if the project continues to provide housing as committed in the application.

The AHP homeownership program provides funds for down payment assistance for the purchase or rehabilitation of a home. This assistance is available to low- and moderate-income households. Funds can be used to reduce principal and assist in down payments, closing costs, and/or rehabilitation costs. Funding is available on a first-come, first serve basis. The program requires that the homebuyer use the home as their primary residence for five years. If they sell the home before the end of the five years, the borrower must repay the assistance on a pro-rated basis.

A presenter also provided an overview of the Freddie Mac Heritage One program. The presenter noted that the program provides financing specifically for Native Americans and Alaska Natives. Borrowers must be members of federally recognized tribes to be eligible. It can be used for multiple types of residential property, including condominiums and manufactured homes. The program can benefit tribal members of multiple income levels, as there is no area median income limit for the program. The presenter noted that the program makes homeownership more affordable for tribal members by combining funding under the program with other financing options, including other mortgage programs and down payment assistance programs. The Heritage One program allows down payments as low as 3%, and homebuyers can receive a credit to offset appraisal costs.

d. Department of Energy (DOE): Clean Energy Funds for Tribal Housing

Staff from the U.S. Department of Energy (DOE) gave a presentation on clean energy funding available for tribal housing. The presenters were Corinna Ikakoula (DOE Supervisor of External Affairs), Lisa Serrano (State and Community Energy Programs, Tribal Outreach Expert), Mike Stevenson (Technical Assistance Supervisor DOE Office of Indian Energy), and Rosey Ricketts (DOE State and Community Energy Office). There are a number of sources of funding available to tribes for clean energy development funding.

Mike Stevenson began with an overview of the DOE technical assistance program within the Office of Indian Energy (OIE). OIE was established specifically to assist tribes with financial assistance, technical assistance, and education/capacity building. The funding opportunities are for installing clean energy technologies and related projects, including implementation. The OIE has a funding opportunities website that you should check regularly. The goal of the technical assistance program is to address a specific challenge or fulfill a need with a specific project, with the goal of a tangible project or specific deliverable to move a project forward. It is at no cost to the tribes. The services that they provide include: strategic clean energy planning, energy efficiency assessments (both in building and process), resources assessments (solar, wind, biomass, hydropower, and geothermal) to develop a shovel ready project, clean energy project planning (modeling, third party reviews, technology options assessment, economic analysis or other project assessments), and building codes and utility formation activities (including feasibility and options analysis). OIE does not provide funding, legal advice, engineering design, or grant writing. There is a page on the OIE website for requesting technical assistance, and their goal is to respond within two weeks of a request.

Lisa Serrano then spoke about the DOE Tribal Home Electrification and Appliance Rebates. This is a formula allocation program (non-competitive). The Inflation Reduction Act includes \$225 million to Indian tribes for this program. While these funds are allocated by formula, ***you must apply for them***. The application deadline is May 31, 2025 to request your tribal allocation. If you do not apply by this deadline, your allocation of the funds will be forfeited. Funds may be used to provide rebates to households, building owners, and contractors for clean energy upgrades (which cannot exceed \$14,000 per household). You can use 20% of the funds for administrative expenses. The funding can only be used for specific measures: appliances, electric

wiring, and energy efficiency upgrades, and cannot be used for solar power or batteries, electric vehicles. The OIE is also providing direct outreach, consultation, and technical assistance.

Rosey Ricketts spoke about the Energy Efficiency and Conservation Block Grant program (EECBG). Tribes have been allocated \$8.8 million through a block grant program. The funds can be used for developing strategies for energy use reduction, community solar and storage installations, energy efficiency retrofits (e.g., heat pump installation), weatherization materials, workforce development programs, and created plans for housing rebate programs. You have a choice of choosing a traditional grant or a voucher program. The key steps for applying for EECBG funding is to determine how to spend your funds, submit an indication that you are interested in applying, preparing the application, and then submitting. There is an online portal for all these steps. EECBG staff will provide you with technical assistance to work through the application process. You will need to obtain a Unique Entity Identifier under SAMS. The eligible activities include many that are targeted specifically to housing: strategy development, technical consultant services, building energy audits, financial incentive programs, energy efficiency retrofits, development and implementation of transportation programs, workforce development, outreach and awareness campaigns, purchase of other weatherization, power generation, or appliance materials. The EECBG program will also be able to provide technical assistance with grant implementation (not just for the application).

e. HUD: Section 184 and Title VI Loan Guarantee Programs

The presenters were Jeff Glass (Senior Loan Guarantee Specialist at HUD ONAP), and Rameda Williams (Native American Specialist at HUD ONAP).

The presentation began with an overview of the Section 184 program, which is a 100% loan guarantee provided by HUD to lenders. The goal is to increase the lending opportunities for housing in Indian communities. Both tribes/TDHEs and individual tribal members can borrow funds with a Section 184 loan guarantee. Individual lenders do not need to be low income. Loans can be manually underwritten by an approved lender, and rates can be competitive. The partners in a Section 184 loan are: HUD, the Tribe/TDHE, the Lender, and the BIA (for title issues).

HUD recently issued updated Section 184 regulations. The final rule makes amendments to conform with statutory amendments. The changes are also intended to increase lender participation in the program, to allow flexibility to address growing demands and participation, and to clarify the rules for stakeholders. HUD is in the process of developing a Handbook for implementing the new Section 184 amendments (HUD circulated sections for comments as they are drafted). You can find a link to the [drafts](#) and comment periods on the HUD Code Talk website. Because HUD is still working on the Handbook, and because other stakeholders will need time to get up to speed, HUD has delayed the effective date of the new rule to January 1, 2025.

Under Section 184 is the new Skilled Workers Demonstration project. The goal of this demonstration project is to test ways to get housing for much-needed skill workers in Indian Country. Tribes/TDHEs may obtain a loan for the construction of rental housing for skilled workers. Tribes are given the flexibility to define “skilled worker.” Tribes may obtain multiple loans under this demonstration project. Tribe/TDHEs would use the rental payments received to

pay for the Section 184 Skilled worker loan. As an incentive the upfront fee is reduced to \$1.00 and the Annual Guarantee Fee is eliminated.

The presentation turned to the Title VI loan guarantee program. This program is directly under NAHASDA and is only available to Tribes/TDHEs (not individuals). This is a 95% loan guarantee program. The guarantee is secured by pledging future IHBG funding to pay back the loan if there is a default.

f. USDA Rural Development Roundtable and Homeownership and Repair Opportunities

During two breakout sessions, Ingrid Ripley (Executive Director of the Single Family Housing (SFH) Guarantee Program), Todd Buelow (Tribal Relations Team Lead), Brian Hudson (SPH Finance and Loan Analyst), and Genti White (Tribal Relations Specialist) introduced themselves, provided an overview of Homeownership and then took questions from the participants. They are looking for ideas, things that they can change, and how they can make their programs more effective for tribes.

The USDA staff gave an overview of the USDA's FY 2023 funding on tribal lands:

- Section 502: USDA provided 17 loans for a total of \$2.9 million
- Section 504 loans/grant combinations: USDA provided 19 loans/grants for a total of \$137,455 for loans and \$180,022 for grants
- 504 loans: USDA provided 2 loans for a total of \$14,994
- 504 grants: USDA provided 9 loans for a total of \$73,320

The first question was to ask the participants to explain what USDA Rural Development does. There are 70 different programs, so they outlined the three agencies in Rural Development. The first is Rural Business and Cooperative Services, which focuses on business and job creation, which includes grants and loan. This is a small business support program. This also includes working with rural cooperatives. They also have energy efficiency services and a loan guarantee program. The second is the Rural Utilities Services, which provides loans and grants for utility infrastructure. This started with electrification, but now focuses on all utilities, including broadband, water, and waste. These are programs that are beneficial for tribal housing programs. There is a traditional program available for tribes, towns, municipalities, and other governments involving mostly loans. There is also a set-aside program for tribes (\$2 million maximum), and this is solely a grant program. You can use this tribal set aside to fund 100% of the program (whereas under the traditional program, you have to leverage 25% of the cost). The third is Rural Housing Service. This provides multi-family housing programs, including rural rental programs to support development of this kind of housing. There is also a direct loan and a loan guarantee program. They also have direct loan and loan guarantee programs to support homeownership, and tribes and tribal members are eligible for these (so long as they are located in rural areas as defined by the USDA program regulations). The participants on the panel urged tribes and TDHEs to visit the USDA Rural Development programs/services website (<https://www.rd.usda.gov/programs-services>), and to keep an eye out for relevant NOFAs at this part of the website (<https://www.rd.usda.gov/newsroom/federal-funding-opportunities>). Overall, USDA Rural Development has about \$150m to \$400m available to tribes or tribal members.

Two of the main programs that serve tribes or their members are the Section 502 and 504 programs.

Section 502 is a Direct Loan Program that assists low- and very-low-income applicants obtain decent, safe and sanitary housing in eligible rural areas by providing payment assistance to increase a participant's ability to repay their primary loans. Payment assistance is a subsidy that reduces the mortgage payment for a short time. Applicants must: lack decent, safe and sanitary housing; be unable to obtain a loan from other resources on terms and conditions that can reasonably be expected to meet; agree to occupy the property as a primary residence; be able to incur a loan obligation; be a U.S. citizen or meet the eligible noncitizen requirements; and not be suspended or debarred from participation in federal programs. The property to be assisted must not have market value in excess of the applicable area loan limit and must not be designed for income producing activities. The loans have 33 year terms, with initial and principal interest payments deferred for the first three years. The loans also have a 1% interest rate, with no down payment required.

The presenters also gave an overview of the Section 502 Native Community Development Financial Institutions Fund (NCDFI) Re-lending Demonstration Pilot program ("Re-Lending Demonstration Program"). The Re-Lending Demonstration Program is intended to increase homeownership opportunities for Native American Tribes, Alaska Native Communities, and Native Hawaiian communities in rural areas. The Re-Lending Demonstration Program is structured so that the USDA provides capital to the NCDFIs, which then provides loans to tribal members. The NCDFIs also do all servicing of those loans. More information can be found [here](#).

Through the Re-Lending Demonstration Program, the Two NCDFIs in South Dakota received a \$800,000 Section 502 direct loan and provided \$200,000 in matching funds for the program. Using those funds, the two NCDF closed 16 loans on tribal lands in South Dakota. In FY 2023, the Consolidated Appropriations Act appropriated \$7.5 million to expand the Re-Lending Demonstration Program nationally. Provided funding to nine applicants across the country.

Section 504 is a Home Repair program that provides loans to very-low-income homeowners to repair, improve or modernize their homes or grants to elderly very-low-income homeowners to remove health and safety hazards. To qualify, an applicant must be the homeowner and occupy the house, be unable to obtain affordable credit, be very-low income, and, for grants, be age 62 or older. Applicants must be in an eligible rural area, and the funds must be used to repair, improve, or modernize homes or remove health and safety hazards. For grants, they may only be used to remove health and safety hazards. The maximum loan is \$40,000, and the maximum grant is \$10,000. Loan terms are 20 years. Grants must be repaid if the property is sold in less than 3 years. The USDA presenters noted that TDHE staff could contract to be the individuals or entities that actually do the repairs.

The USDA Rural Housing also provides 5-year site loans to assist low- and moderate-income families purchase and develop housing. These loans are available on both fee land and tribal lands. Loan applicants may be private or public non-profit organizations or federally recognized tribes. The benefits include lower costs of construction. The site loans through USDA's

Section 523 have a 3% interest rate. The interest rate for loans through the Section 534 are set below market rate, established and published monthly, and are fixed at closing. Applications are accepted year-round through state and local Rural Development offices. More information is available [here](#).

The USDA Rural Housing self-help grants provide grant funding to qualified organizations to help them carry out local self-help housing construction projects. The purchase price of a home can be reduced by an owner or builder's labor on the home (a.k.a., "sweat equity"). The self-help grants are a two-year grant that can be awarded to the same individual multiple times. The funds may also be used to provide technical and supervisory assistance to low and very low-income families and to assist families in applying and participating in the program.

There were also a number of questions about USDA not having enough boots on the ground in Indian communities to provide the technical assistance or consultation on various programs. The participants on the panel explained that there have been cuts over the years and that this is a problem. But they are also developing more staff who are working remotely and who can meet by phone or videoconference. This is something they are cognizant of and are working on it. USDA Rural Development staff emphasized that they are trying to increase the loans provided to tribes, but that their funding ability is limited by the low amount of funding that Congress appropriates for the programs.

I (Ed Goodman) raised the issue of various USDA local offices telling tribes and TDHEs that they are required to sign the standard USDA non-discrimination assurances, which is inconsistent with the tribal right to utilize Indian and tribal preference. Mr. Buelow said he understood this concern and that they are trying to provide ongoing education to local offices. There is a statutory exemption from 2006 that expressly excludes Indian and tribal preference from applicable non-discrimination requirements, and tribes/TDHEs should not be required to sign those kinds of standard forms. This is the exact kind of issue that the Tribal liaisons at USDA are there for.

g. ONAP Customer Service: Strengths and Opportunities

Gary Cooper (HUD ONAP Associate Deputy Assistance Secretary (ADAS)), and Iris Friday (HUD ONAP Native American Program Specialist) gave a presentation on ONAP's delivery of HUD housing programs.

ADAS Cooper mentioned that HUD and the U.S. Indian Health Service (IHS) will be holding a joint consultation on the use of IHS sanitation facilities construction funding for tribes. He noted that currently, tribes cannot use IHS sanitation facilities construction funding for new homes funded through HUD grant programs. This prohibition is a result of an annual appropriations rider that Congress includes each year and has been unwilling to remove.

ADAS Cooper remarked on a couple of ONAP grants that have upcoming deadlines: FY 2024 ICDBG applications are due **July 15, 2024**. The ICDBG FY 2024 grant has \$75 million available, with a maximum grant of \$5 million and a minimum grant of \$500,000. The FY 2024

IHBG competitive grant applications are due **August 29, 2024**. The grant will provide \$150 million in funding, with a maximum grant of \$7.5 million and a minimum grant of \$500,000.

One of the participants asked about BABA applicability to grants. As noted above, 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. HUD's waiver of BABA applicability for tribes (which expires September 30, 2024). HUD's waiver for tribes states that BABA only applies to new grants that HUD obligates after October 1, 2024. The participant asked when a grant is considered obligated for purposes of the waiver, and whether HUD's announcements of an award are enough to have it obligated for BABA purposes or whether the grantee must first sign the grant agreement. ADAS Cooper noted that as long as the HUD has executed and sent out the grant award to the grantee, that grant is considered obligated for purposes of BABA.

ADAS Cooper also commented on the HUD Housing Counseling requirements. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, entities that participate in the HUD Housing Counseling Program ("Housing Counseling Program") must be certified by HUD. On June 12, 2024, the HUD Office of Housing Counseling (OHC) published a Housing Counseling Program final rule, outlining housing counselor certification requirements for housing counseling conducted in connection with the IHBG and the ICDBG programs. The final rule exempts tribes, TDHEs and tribal entities from compulsory participation in the existing Housing Counseling Program (Subparts B–E of the regulations) unless the entities also provide housing counseling under, or in connection with, other HUD programs (other than IHBG and ICDBG). Instead, the final rule adds a new Subpart F (24 CFR § 214.600) to the regulations that establishes housing counseling certification requirements specific to tribes, TDHEs, and other tribal entities. ADAS Cooper noted that HUD has not yet developed the tribal test for the certification process but plans to do so in the next few years. Tribes will have a four-year transition period for when they need to obtain a tribal certification, to ensure that they have enough time to meet the certification requirements.

Conclusion

If you have any questions about this memorandum, please contact Ed Clay Goodman (egoodman@hobbsstrauss.com) or Cari Baermann (cbaermann@hobbsstrauss.com); both may be reached by phone at 503-242-1745.