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MEMORANDUM

August 1, 2024

TO: TRIBAL HOUSING CLIENTS

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

RE: ***NAIHC August 1, 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 August 1, 2024, as well as updates on other housing matters.

I. NAIHC Legislative Committee

NAIHC Executive Director Douglas Marconi and NAIHC Legislative & Program Aide Blythe McWhirter facilitated the Legislative Committee Meeting.

a. Budget and Appropriations

Ms. McWhirter provided an update on the Fiscal Year (FY) 2025 appropriations. As we have reported in prior memoranda, 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. 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 increases with cuts elsewhere. As such, the FY 2025 Budget Request is significantly lower across the board than the FY 2024 enacted levels.

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%).

Both the House and Senate Appropriations Committees have released the FY 2025 bill for Transportation, Housing and Urban Development, and Related Agencies Appropriations Act (THUD). The House and Senate THUD bills both provide for \$1.455 billion total 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 request. Ms. McWhirter commented

that appropriations for the Native Hawaiian Housing Block Grant (NHHBG) was removed from the full committee markup of the House THUD bill. House Appropriations Committee Chairman Tom Cole (R-OK) stated that he will strive to add the NHHGB funding back in. However, Chairman Cole also indicated that in order to add the funding for the NHHBG back in, that funding may be deducted from the \$1.22 billion allocated to the IHBG in the THUD bill.

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

Native American Programs	FY 2024	FY 2025 Request	House THUD Bill	Senate THUD Bill
Tribal HUD-VASH	\$7.5 million	\$0	\$8 million	\$7.5 million
Indian Housing Block Grant (IHBG)	\$1.11 billion	\$820 million	\$1.22 billion	\$1.217 billion
IHBG Competitive Grants	\$150 million	\$150 million	\$150 million	\$150 million
Title VI Loans	\$1 million	\$1 million	\$1 million	\$1 million
Indian Community Development Block Grant (ICDBG)	\$75 million	\$75 million	\$75 million	\$80 million
Training and Technical Assistance	\$7 million	\$7 million	\$7 million	\$7 million
National Organization Funding (per Sec.703 of NAHASDA)	\$2 million	\$2 million	\$2 million	\$2 million
Section 184 Loans	\$1.5 million	\$2 million	\$2 million	\$1.5 million
Imminent threats to health and safety	\$5 million	\$5 million	\$5 million	\$5 million
Native Hawaiian Program				
Native Hawaiian Housing Block Grant (NHHBG)	\$22.3 million	\$22.3 million	\$0	\$22.3 million
Native Hawaiian Housing Loan Guarantee Program (Section 184A)	\$28 million	\$0	\$28 million	\$28 million
Native Hawaiian Training and Technical Assistance	\$1 million	\$1 million	\$0	\$1 million

Congress must pass the FY 2025 appropriations by September 30, 2024 in order to continue funding the Federal Government. However, the House has already gone into recess and will return September 9, 2024. The Senate will go into recess this week. After Congress returns, the focus will be on the 2024 elections, so Congress may not enact any appropriations bills before the September 30, 2024 deadline and will likely pass a continuing resolution (CR) to avoid a government shutdown.

The participants held a discussion on the IHBG formula allocations and how those allocations affect tribes of different sizes. One of the participants noted that the IHBG negotiated rulemaking determined those formula allocations, after long debates about how to structure that formula. It was noted that the IHBG formula can be changed again through formula negotiated

rulemaking. One participant suggested that the reauthorization of Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) might lead to another negotiated rulemaking. We note that the regulations themselves appear to authorize additional formula negotiated rulemaking (24 CFR 1000.306(a)), and we are not aware of HUD taking the position that NAHASDA reauthorization is required for additional negotiated rulemaking to take place. While the last round of formula negotiated rulemaking began before NAHASDA expired in 2013, HUD continued that negotiated rulemaking for several years after the statute expired.

b. NAHASDA Reauthorization

Tribal housing advocates have continued their efforts to reauthorize NAHASDA. On July 10, 2024, the Senate Committee on Indian Affairs (SCIA) Chair Brian Schatz (D-HI) and Vice Chair Lisa Murkowski (R-AK) added the NAHASDA reauthorization bill to the Senate's National Defense Authorization Act (NDAA). Because the NDAA is a "must pass" bill, having the NAHASDA reauthorization attached to the Senate version of the NDAA is good news. In addition, various Senators have added a significant number of other amendments to the NDAA, and it is not yet certain whether these additional amendments will undermine the chances of keeping the NAHASDA reauthorization as an NDAA amendment. We recommend that tribal housing advocates reach out to House Republican and Democrat leaders to advocate that the House keep the NAHASDA reauthorization attached to the NDAA this year.

c. HUD grants

The FY 2024 IHBG Competitive Grant Program application deadline is August 29, 2024. The total program funding is estimated to be \$150 million.

d. 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 (TDHEs), 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 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.

e. Build America, Buy America Act (BABA)

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

The BABA requires HUD to ensure that none of the funds made available for infrastructure projects may be obligated by HUD unless it has taken steps to ensure that all iron, steel, manufactured products, and construction materials used in a project are produced in the United States. Projects include “the construction, alteration, maintenance, or repair of infrastructure in the United States.” The BAP applies to *all sources* of Federal Financial Assistance (FFA) provided to tribes, TDHEs, and other tribal entities (collectively “Tribal Recipients”) involving infrastructure projects. 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.

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 July 10, 2024, HUD issued a final rule, extending the Waiver again and stating that the Waiver period will end on **September 30, 2024**. Tribes and TDHEs should begin preparing for how to comply with BABA, so that they are ready when the waiver expires.

Cari L. Baermann commented that staff from the HUD Office of Native American Programs (ONAP) have indicated that they will release guidance before October 1, 2024 on how to comply with BABA. The ONAP staff have also indicated that the first grant to be subject to BABA will likely be the FY 2024 IHBG competitive grant. Since the Waiver expires this September, we recommend that TDHEs add BABA compliance language to contracts now if they anticipate using the FY 2024 IHBG competitive grant or other future federal grants to fund an infrastructure project.

f. Tribal Interagency Advisory Committee

HUD held its most recent Tribal Interagency Advisory Committee (TIAC) in-person meeting in May, 2024. One of the participants on the call reported that as a result of the TIAC’s efforts, HUD is actually listening to tribes and what they presented at the TIAC meeting. He also stated that the tribal TIAC members are continuing to work with HUD on addressing a number of issues, such as the high cost of construction. The participant noted that if a tribe uses tribal dollars, the cost of the construction is often half as much as what it is if the tribe uses federal funding. He remarked that there are a number of causes of this difference, including the additional federal procurement requirements that tribes and TDHEs must meet if they use federal funding.

The next in-person TIAC meeting will be on September 10-12, 2024 at the regional HUD office in Fort Worth, Texas.

g. Department of Energy

The U.S. Department of Energy's (DOE) Tribal Home Electrification and Appliance Rebates Program provides up to \$225 million to grant to tribal governments for home electrification and appliance rebates. The funding can be used to update a number of appliances, including heat pump HVAC systems, circuit panels, and water heaters. It also provides up to \$14,000 per eligible household for energy efficiency and electrification upgrades. Applications are due May 31, 2025. The grant allows tribes to tailor the rebates for their local community needs. More information is available [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 Legal Symposium on December 9–12, 2024 in Las Vegas, Nevada. NAIHC will post more information about the Legal Symposium soon.

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.