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## MEMORANDUM

September 6, 2024

TO: TRIBAL HOUSING CLIENTS

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

RE: ***NAIHC September 5, 2024 Legislative Committee Meeting, HUD TIAC Meeting, and Other Housing Updates***

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This memorandum provides a synthesis of information presented during the National American Indian Housing Council (NAIHC) Legislative Committee Meeting held on September 5, 2024, the U.S. Department of Housing and Urban Development's (HUD) Tribal Intergovernmental Advisory Committee (TIAC) September 5, 2024 virtual meeting, and updates on other housing matters.

### I. NAIHC Legislative Committee

NAIHC Executive Director Douglas Marconi, NAIHC Board Member Sharon Vogel, 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. 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 original budget request. Ms. McWhirter commented that appropriations for the Native Hawaiian Housing Block Grant (NHHBG) were removed from the full committee markup of the House THUD bill. She remarked that House Appropriations Committee Chairman Tom Cole (R-OK) stated that he will strive to add the NHHBG 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, and the recently released THUD appropriations bills:

Native American Programs	FY 2024		House THUD Bill	Senate THUD Bill
Tribal HUD-VASH	\$7.5 million		\$8 million	\$7.5 million
Indian Housing Block Grant (IHBG)	\$1.11 billion		\$1.22 billion	\$1.217 billion
IHBG 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	\$80 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	\$1.5 million
Imminent threats to health and safety	\$5 million		\$5 million	\$5 million
<b>Native Hawaiian Program</b>				
Native Hawaiian Housing Block Grant (NHHBG)	\$22.3 million		\$0	\$22.3 million
Native Hawaiian Housing Loan Guarantee Program (Section 184A)	\$28 million		\$28 million	\$28 million
Native Hawaiian Training and Technical Assistance	\$1 million		\$0	\$1 million

Congress returns on September 9<sup>th</sup>, 2024 with only three weeks until the end of FY 2024. Congress must pass the FY 2025 appropriations by September 30, 2024 in order to continue funding the Federal Government. Congressmembers have indicated a willingness to pass a continuing resolution (CR) to avoid a government shutdown. Cari Baermann noted that the House Republicans are currently preparing a stopgap funding package as an opening offer. Its key provisions appear to include the following:

- **Continue funding the government at FY 2024 levels through March 2025.** We are not sure what the Senate Democratic leadership or Administration's position is on timing.
- **Require voters to provide proof of citizenship to participate in elections.** The House Republican package includes the SAVE Act ([HR8281](#)), which aims to ensure that noncitizens cannot vote in elections. CQ News wrote that “[w]hile federal law already prohibits noncitizens from voting in U.S. elections, bill supporters point to states being unable to actually verify the citizenship status of prospective voters in some circumstances. [The bill] would require documentary proof of U.S. citizenship alongside voter registration and clarify that states can remove noncitizens from voter rolls.” This bill is a nonstarter in the Senate, and the White House has come out strongly against the bill.

- **Extend the Farm Bill by one year through September 30, 2025.** It currently expires at the end of the month, but neither the House nor Senate has made much progress toward enactment.
- **Provide supplemental funding to cover shortfalls at FEMA and the VA.**

This package faces a rough road ahead. Its most contentious aspect is the SAVE Act provisions. For this alone, almost every Democrat will vote against it, and just a few Republican defectors could undermine its chances of passing the House. Regardless, the Senate will not pass the SAVE Act.

*b. NAHASDA Reauthorization*

Tribal housing advocates have continued their efforts to reauthorize NAHASDA. Ms. McWhirter commented that 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). NAIHC's summary of the NAHASDA reauthorization bill is attached. 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.

NAIHC has put together a letter of support of the Senate's NAHASDA reauthorization bill. NAIHC is requesting tribes and TDHEs to sign on to the letter of support so that NAIHC can send the letter to members of Congress. Tribes and TDHEs can contact Ms. McWhirter at [bmcwhirter@naihc.net](mailto:bmcwhirter@naihc.net) for a copy of the letter of support.

*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 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.

HUD has granted and extended a general applicability public interest waiver (“Waiver”) of the BAP in connection with HUD funding provided to Tribal Recipients. The most recent extension of that Waiver period will end on **September 30, 2024**. The U.S. Office of Management and Budget (OMB) has indicated that it expects Tribal Recipients to fully comply with BABA starting on **October 1, 2024** for funds that have not been obligated prior to that time.

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 their reading of the “obligation” requirement is that BABA will not apply to any funds that have already been allocated to Tribes and TDHEs, and 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.

On **September 18–19, 2024**, Ed Clay Goodman, Cari Baermann, and Julie Van Winkle of Hobbs Straus Dean & Walker, LLP will be providing a day-and-a-half training on the existing requirements for BABA compliance during the Northwest Indian Housing Association (NWIHA) fall quarterly meeting at the Muckleshoot Resort Casino in Auburn, Washington. Among the topics to be covered are the following: which infrastructure projects BABA covers; which products and equipment are covered; what a “buy America preference” is and how to apply it; what project-specific waivers are available. More information about the NWIHA fall quarterly meeting and the BABA training is available [here](#).

In addition, ONAP will be holding a virtual [BABA Training for ONAP Grantees](#) on **September 23, 2024** from 1:00 PM–2:30 PM ET. ONAP intends the training to provide a background and history on BABA and cover the roles and responsibilities of ONAP grantees. The training will also cover the BABA waiver request process for tribes and TDHEs.

*d. Choice Neighborhoods Program*

HUD has issued a [Request for Information](#) (RFI) regarding HUD’s Choice Neighborhoods Grant selection process and award implementation. HUD’s intent of the RFI is to better understand the opportunities and barriers to applying for and subsequently managing Choice Neighborhoods grants. HUD is particularly interested in receiving tribal feedback on how HUD can reduce or eliminate grant application and expenditure barriers.

The deadline for providing feedback is **October 11, 2024**. Interested persons can submit feedback via <http://www.regulations.gov>.

*a. CoC Builds Notice of Funding Opportunity*

On July 19, 2024, HUD published the [Continuum of Care \(CoC\) Builds \(“CoCBUILDS”\) NOFO](#). The CoCBUILDS program will provide grants within CoC geographic areas to address and reduce homelessness by increasing the number of permanent supportive housing (PSH) units through new construction, acquisition, or rehabilitation. The CoCBUILDS NOFO provides

incentives for tribes and TDHEs to apply for funds to develop new PSH units. HUD anticipates providing approximately 25 awards from the funds available under the CoCBUILDS NOFO. The CoCBUILDS NOFO sets aside up to three awards for the highest scoring project applications where the PSH units are located on tribal reservations or trust lands. The minimum award is \$1,000,000 and the maximum award is \$10,000,000. Applications are due **November 21, 2024**.

HUD has advised that tribes and TDHEs that are interested in forming a new CoC should contact the Office of Special Needs Assistance Programs [SNAPSinfo@hud.gov](mailto:SNAPSinfo@hud.gov) as soon as possible.

*e. 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 that is sent out before each call.

NAIHC will hold its annual Legal Symposium on December 9–12, 2024 in Las Vegas, Nevada. Registration is open on the NAIHC website [here](#).

## **II. Tribal Interagency Advisory Committee**

On September 5, 2024, HUD held a virtual TIAC meeting. Below is a summary of the TIAC meeting.

Jacqueline Pata, TIAC Co-Chair and First Vice President of the Central Council of Tlingit and Haida Indian Tribes of Alaska, gave opening remarks during the virtual meeting. Jad Atallah, ONAP Director of Performance and Planning, and Kristen Arnold, ONAP Specialist, attended the virtual meeting as well.

HUD will hold its next TIAC in-person meeting on September 10–12, 2024 at the regional HUD office in Fort Worth, Texas. The TIAC will hold a tribal caucus on Tuesday, September 10, 2024, followed by a full TIAC meeting with HUD representatives on Wednesday, September 11, 2024, and a site visit to the Choctaw Nation on Thursday, September 12, 2024. The tribal leaders in the virtual meeting discussed the agenda for the in-person September 10–12 HUD TIAC meeting.

The TIAC tribal leaders also discussed topics they intend to bring up at the in-person TIAC meeting. Topics include the NAHASDA reauthorization, BABA implementation, and recommending that tribes and Tribally-Designated Housing Entities (TDHEs) be allowed to report on all HUD grants using the Indian Housing Plan (IHP)/Annual Performance Report (APR).

The tribal leaders also discussed whether OMB would provide tribes and TDHEs with any type of exemption from BABA, based on tribes being sovereign nations and their tribal treaty rights. One of the tribal leaders mentioned that OMB has not shown any willingness to accept such arguments as justification for a BABA exemption. Mr. Atallah mentioned that HUD is still working to see if there will be any additional relief from the BABA requirements for tribes, but it

is not likely. However, the tribal leaders indicated that they will continue to advocate for a full BABA tribal exemption.

The tribal leaders also agreed to discuss HUD's Housing Counseling requirements at the in-person TIAC meeting. 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). Mr. Atallah remarked that this means that if a tribe provides an IHBG-funded housing program that requires the homeowner to take a housing counseling class, that housing counseling must still be provided by a HUD-certified housing counselor, even if the housing counseling class itself is not funded by IHBG. Mr. Atallah therefore recommended that each tribe look into having one tribal member go through the HUD housing counseling certification, so that a tribal member can provide that housing counseling for the tribe.

The final rule also added 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. HUD will be developing the tribal test for the certification process over the next couple of years. Tribes will have a four-year transition period by which they need to obtain a tribal certification, to ensure that they have enough time to meet the certification requirements. HUD is looking for feedback from tribes and TDHEs on what information the tribal test should cover, as well as how best to structure the test.

### ***Conclusion***

If you have any questions about this memorandum or any of the topics discussed in this memorandum, please contact Ed Clay Goodman ([egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com)) or Cari Baermann ([cbaermann@hobbsstrauss.com](mailto:cbaermann@hobbsstrauss.com)). Both may also be reached at 503-242-1745.