




**MEMORANDUM**

October 4, 2024

TO: TRIBAL HOUSING CLIENTS

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

RE: ***NAIHC October 3, 2024 Legislative Committee Meeting, HUD TIAC 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 October 3, 2024, the U.S. Department of Housing and Urban Development’s (HUD) Tribal Intergovernmental Advisory Committee (TIAC) virtual meeting, also held on October 3, 2024 and updates on other housing matters.

**I. NAIHC Legislative Committee**

NAIHC Executive Director Douglas Marconi, NAIHC Legislative & Program Aide Blythe McWhirter, and Chris Kolerok, Director of Cook Inlet Housing Authority, facilitated the Legislative Committee Meeting.

*a. Budget and Appropriations*

Mr. Kolerok provided an update on the Fiscal Year (FY) 2025 appropriations. As we have reported previously, the House and Senate Appropriations Committees have released their respective FY 2025 bills 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. Here again for your reference is the chart we provided previously showing the FY 2024 appropriations, and the recently released THUD appropriations bills:

<b>Native American Programs</b>	<b>FY 2024</b>	<b>House THUD Bill</b>	<b>Senate THUD Bill</b>
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

However, due to disputes between Republican and Democratic caucuses over FY2025 appropriations, Congress was not able to pass any full year appropriations bills for FY2025 before the end of the FY 2024 fiscal year. In order to avoid a government shutdown, on September 25, 2024, Congress passed a continuing resolution (CR) (H.R.9747) to fund the Federal Government through December 20, 2024. The CR funds the federal government at FY 2024 levels through December 20, 2024. Congress has roughly five weeks after the November elections to pass a full-year fiscal 2025 spending deal before the December 20, 2024 deadline. Giving the timing and previous years' resolutions, Congress is likely to use an "omnibus" appropriations bill to pass FY 2025 appropriations – but that will depend very significantly on the outcome of the election in November. "Omnibus" bills are massive, thousand-page pieces of legislation that include all twelve appropriations bills.

*b. Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) Reauthorization*

Tribal housing advocates have continued their efforts to reauthorize NAHASDA. Mr. Kolerok 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), but the NAHASDA reauthorization provisions were not included in the "manager's report" for the NDAA forwarded to conference. Because the NDAA is a "must pass" bill, having the NAHASDA reauthorization attached to the Senate version of the NDAA would be beneficial. However, Mr. Kolerok commented that while many Senators support NAHASDA, a number of House Representatives are not supportive of the NAHASDA reauthorization. As a result, Mr. Kolerok remarked that there is likely very little chance that the NAHASDA reauthorization will be approved as an NDAA amendment.

NAIHC staff and Board Members stated that they will continue to advocate for a NAHASDA reauthorization. Some of the participants commented that this may be a good opportunity for housing advocates to discuss which NAHASDA provisions are the most critical and to prioritize advocating that Congress pass those critical provisions. However, several

participants also noted that Representative Maxine Waters' (D-CA) ongoing efforts to obstruct the NAHASDA reauthorization may prevent her from supporting any NAHASDA reauthorization provisions. Representative Waters continues to insist 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), withholding NAHASDA funding from the Five Tribes unless they provide housing assistance to Freedman descendants. Representative Waters is the Ranking Member of the House Financial Services Committee, which must sign off on such legislation. As a result, those participants on the call noted that she has effectively blocked consideration of multiple NAHASDA reauthorization bills in the House. The participants commented that until tribal advocates determine a way to either work with or work around on NAHASDA reauthorization bill, advocating for a few specific NAHASDA provisions is unlikely to succeed.

*c. Build America, Buy America Act (BABA)*

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

The BABA requires federal agencies, including 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, tribally designated housing entities (TDHEs), and other tribal entities (collectively "Tribal Recipients") involving infrastructure projects.

HUD 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 ended 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. As we have reported previously, Office of Native American Programs (ONAP) staff 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.

HUD's ONAP has previously indicated that it would release guidance before October 1, 2024 on how to comply with BABA, but ONAP has not yet released that guidance. Since the Waiver expired on October 1, 2024, 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.

With regard to ongoing efforts to extend the Tribal BABA Waiver or to exempt tribes/TDHEs from BABA applicability permanently, Mr. Kolerok recommended that TDHEs focus on demonstrating exactly how difficult it would be for TDHEs to comply with the BABA

requirements. He noted that TDHEs can demonstrate that by collecting responses to invitations for bids to show how BABA will drive up the prices of projects. He also recommended that if a TDHE does not receive any responses to invitations for bids, and the TDHE believe that the non-responsiveness is due to contractors being unwilling to comply with BABA requirements, the TDHE should submit that information to Jad Atallah, ONAP's Director of Performance and Planning. Mr. Atallah can then submit the data to OMB to persuade OMB to grant a permanent BABA waiver for TDHEs.

One of the participants commented that there will be numerous, extreme changes that TDHEs will have to implement within their procurement process in order to comply with BABA. She noted that there has not been enough training or guidance for procurement staff on the BABA requirements, which will hinder their ability to comply with BABA. The participant therefore requested that NAIHC consider how to provide more training for TDHE procurement staff.

*d. Tribal Directory Assessment Tool (TDAT) Enhancement Project*

Ms. McWhirter provided a brief overview of HUD's Tribal Directory Assessment Tool (TDAT) Enhancement Project. HUD's Office of Environment and Energy (OEE) developed the TDAT "to help users identify federally recognized Tribes that may have an interest in the proposed location of a HUD-assisted project and to provide Tribal contact information to assist users with initiating Section 106 reviews under the National Historic Preservation Act (NHPA, 54 U.S.C. § 300101 et seq.). TDAT is intended to improve the consistency and capability of grantees seeking to appropriately and successfully begin meaningful consultation with Tribes and in so doing ensure project considerations are better incorporated into project design."<sup>1</sup>

On September 11, 2024, HUD published a [Dear Tribal Leader Letter](#) requesting tribal feedback on how to enhance the TDAT. Ms. McWhirter commented that HUD will be hosting three listening sessions at 2:00 PM ET on **October 17th, November 14th, and December 5th, 2024**. More information is available [here](#). OEE welcomes tribal participation in any of these upcoming sessions and invites tribes and TDHEs to submit additional questions and comments prior to the sessions. These can be submitted via email to [TDAT\\_info@hud.gov](mailto:TDAT_info@hud.gov). The deadline for providing TDAT listening session specific comments and questions is Monday, October 14, 2024.

*e. 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.

---

<sup>1</sup> U.S. Dep't of Housing & Urban Devel., Dear Tribal Leader Letter, Tribal Directory Assessment Tool (TDAT) Enhancement Project (Sept. 11, 2024), [https://content.govdelivery.com/attachments/USHUDPIH/2024/09/16/file\\_attachments/2999083/TDAT%20Dear%20Tribal%20Leader%20Final%20-%202024.pdf](https://content.govdelivery.com/attachments/USHUDPIH/2024/09/16/file_attachments/2999083/TDAT%20Dear%20Tribal%20Leader%20Final%20-%202024.pdf).

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

*f. CoC Builds Notice of Funding Opportunity (NOFO)*

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.

*g. 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 October 3, 2024, HUD held a virtual 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; Nick Zolkowski, ONAP Specialist; and Kristen Arnold, ONAP Specialist, attended the virtual meeting as well.

The TIAC members discussed their plans to follow up on the topics and goals discussed during the TIAC in-person meeting on September 10–12, 2024, in Fort Worth, Texas. Below is a summary of the discussion.

*a. HUD Section 184 Handbook*

The TIAC members held a brief discussion on HUD’s Section 184 Indian Housing Loan Guarantee (“Section 184”) Program. On March 20, 2024, the U.S. Department of Housing and Urban Development (HUD) published a [final rule](#) (“Final Rule”) on the Section 184 program.

HUD's Office of Loan Guarantee (OLG) has released proposed [draft sections](#) of the Section 184 Policy Handbook ("Handbook") to implement the Final Rule's amendments to the regulations.

OLG has now released Chapter II of the Handbook. The participants remarked that Chapter II is more geared towards lenders. However, tribes and TDHEs can still comment on that Chapter II. Comments are due by **October 22, 2024**. More information is available [here](#).

*b. Construction Issues*

The TIAC members also held a brief discussion to follow up on TIAC's efforts to improve tribal building codes, the substandard building conditions of some tribal housing, and ways to improve the conditions of tribal housing through use of the International Building Code (IBC). The International Code Council is a nonprofit that created the IBC to be used as a base code standard for housing construction. One of the benefits of tribes using the IBC is that it could help tribes enforce building standards and hold contractors accountable to complying with building standards. HUD staff and the TIAC members stated that they will continue to work with the International Code Council regarding increasing the use of the IBC in tribal communities.

*c. HUD and Indian Health Service (IHS) Joint Letter*

The TIAC discussed an ongoing issue with using IHS funding for tribal housing projects. Currently, an annual appropriations rider prohibits tribes from using IHS sanitation facilities funding for new homes funded through HUD grant programs.<sup>2</sup> This includes IHBG funding. Many tribes need IHS sanitation funding to develop sanitation systems for housing construction projects. However, the appropriations rider forces tribes to choose between using HUD funding or IHS sanitation funding for the project.

On September 9, 2024, HUD and IHS issued a [Dear Tribal Leader Letter](#) (DTLL) addressing this issue. The DTLL states that HUD and IHS are seeking tribal "feedback and recommendations on how HUD and IHS programs can better address the housing-related water and sewer infrastructure needs of Tribal communities." HUD and IHS are also seeking feedback on a number of specific questions, which can be found in the [DTLL](#). Tribes and TDHEs can email their comments and recommendations to: [consultation@hud.gov](mailto:consultation@hud.gov) and [consultation@ihs.gov](mailto:consultation@ihs.gov), using the subject line "HUD/IHS Housing-related Infrastructure for Tribal Communities." The comment period closes on **November 9, 2024**. In addition to written comments, HUD and the IHS will hold a virtual Consultation session, details of which will be forthcoming. Please let us know if you would like assistance with drafting and submitting comments.

*d. Future HUD TIAC Meetings*

The TIAC members agreed to continue to meeting virtually twice each month.

## **Conclusion**

---

<sup>2</sup> See, e.g., Consolidated Appropriations Act of 2024, Pub. L. 118-42, 138 Stat. 275 (2024) <https://www.congress.gov/bill/118th-congress/house-bill/4366/text>.

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.