




MEMORANDUM

December 17, 2024

TO: TRIBAL HOUSING CLIENTS
FROM:  Ed Clay Goodman & Cari L. Baermann
HOBBS, STRAUS, DEAN & WALKER, LLP
RE: *NAIHC Legal Symposium*

This memorandum provides a synthesis of recent developments in housing matters, as well as information presented during the National American Indian Housing Council (NAIHC) Legal Symposium and Legislative Committee meeting held in Las Vegas on December 9–12, 2024.

I. NAIHC Legislative Committee Meeting

NAIHC held its monthly Legislative Committee Meeting in person on December 9, 2024. NAIHC Legislative & Program Aide Blythe McWhirter presided over the meeting.

a. Budget and Appropriations

Ms. McWhirter 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. Here again for your reference is the chart we provided previously 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
Native Hawaiian Program			
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, Congress was not able to pass any full year appropriations bills for FY2025 before the end of the FY 2024. In order to avoid a government shutdown, Congress passed a continuing resolution (CR) (H.R.9747) on September 25, 2024 to fund the Federal Government at FY 2024 levels through December 20, 2024. Congress will likely pass another CR before the December 20, 2024 deadline and plan to pass the appropriations bills in March after the new 119th Congress begins.

McWhirter discussed NAIHC’s plan for advocating for tribal housing with the new presidential administration. She noted that the following are NAIHC’s main asks:

- Identify all federal forms of housing and/or homeless assistance available to tribes and tribally designated housing entities (TDHEs) through federal agencies. Ensure that all federally recognized tribes have access to those streams.
- Ensure that technical assistance for tribes is available through NAIHC.
- Issue a letter of support for the reauthorization of Native American Housing Assistance and Self Determination Act (NAHASDA) of 1996.
- Make a commitment that future presidents’ budgets will request sufficient funding for tribal housing programs, accounting for inflation and rising construction costs.
- Identify and reverse unfunded mandates issued during President Biden’s administration. Reverse the Build America Buy America Act (BABA).
- Ensure the continuation of United States Department of Housing and Urban Development’s (HUD) Tribal Intergovernmental Advisory Committee (TIAC).

One of the participants asked whether NAIHC will be asking for Congress to introduce a new bill to support housing vouchers for tribal veterans. Ms. McWhirter said that NAIHC will add that request to its advocacy efforts.

Another participant asked what the factors are that NAIHC considers in developing its legislative budget recommendations. McWhirter responded that NAIHC looks at all programs under NAHASDA and advocates for an increase in all program funding. She also stated that one significant factor that NAIHC considers is inflation and how inflation has impacted tribal housing. Chris Kolerok, the new NAIHC Legislative Committee Co-Chair, commented that in drafting the appropriations, Congress frequently focuses on drafting provisions that will successfully make it through the Congressional negotiations and that the President would accept. As a result, in drafting

its budget recommendations, NAIHC strategizes by focusing on advocating for the provisions have a chance of being passed by a contentious Congress.

The participants discussed whether it would be possible for NAHASDA to be revised to be structured similar to 638 contracts under the Indian Self-Determination and Education Assistance Act (ISDEAA), so that tribes can obtain indirect contract support costs. One participant remarked that changing NAHASDA to provide for indirect costs would take a significant effort, which is unlikely to succeed. NAHASDA currently provides that TDHEs can only use 20% of the funds provided for indirect support costs. The participants also discussed whether it would be possible and beneficial to move tribal housing to be under the U.S. Bureau of Indian Affairs (BIA). One participant remarked that given the current contentious dynamics of Congress, it is very unlikely that such a switch would be allowed.

The participants held a discussion about whether HUD funding could be included in a 477 plan. The Public Law 102-477 (PL 477) program allows tribes to consolidate federal programs related to employment, training, and supportive services into a single, comprehensive plan. *See* 25 U.S.C. § 3403. Once the programs are integrated into a PL 477 plan, the tribe or TDHE can commingle and reallocate the funds associated with those programs to maximize their impact and tailor services to meet local needs. *Id.* § 3413(a)(1)(A). Reporting requirements associated with integrated programs are replaced by a single annual report in which Tribes report on the administration of the PL 477 plan. *See id.* §§ 3413(a)(2), 3410(b).

The PL 477 law sets out two eligibility requirements for a program to be integrated into a PL 477 plan. First, the program must be implemented for a purpose related to workforce development, such as job training, creating or enhancing educational opportunities, skill building, or (importantly) supportive services. *Id.* § 3404(a)(1)(A). Many programs that are not directly related to workforce development, including IHBG-funded programs, have been successfully integrated into PL 477 plans. These types of programs have been integrated on the basis of being supportive services that, by virtue of being a part of a comprehensive network of social services, improve workforce outcomes and opportunities for program participants. Second, the program must be one in which tribes or members of tribes:

- (i) are eligible to receive funds—
 - (I) under a statutory or administrative formula making funds available to an Indian tribe; or
 - (II) based solely or in part on their status as Indians under Federal law; or
- (ii) have secured funds as a result of a noncompetitive process or a specific designation.

Id. § 3404(a)(1)(B).

There are a number of benefits to integrating programs into a PL 477 program. For example, once a program is integrated into a PL 477 plan, the tribe is no longer subject to any administrative cost cap associated with those program funds.¹ Additionally, the PL 477 law

¹ *Id.* § 3413(c).

automatically removes and replaces all reporting requirements associated with integrated programs.² However, tribes and TDHEs might face certain obstacles in integrating programs into a PL 477 program as well. One such obstacle is that a tribe must establish its own ISDEEA program before it can integrate programs into a PL 477 plan. A second obstacle is that transitioning to a PL 477 plan requires coordination among various tribal programs (e.g., between the TDHE, tribal child care office, etc.) and integration of accounting and data collection mechanisms between the different programs. This transition can be difficult, especially when tribal programs have long-standing traditions and processes for how they manage their services.

b. NAHASDA Reauthorization

As we have reported previously, 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) (a must-pass bill). Unfortunately, the NAHASDA reauthorization provisions were not included in the "manager's report" for the NDAA forwarded to conference, so it is very unlikely that a NAHASDA reauthorization would be passed before the end of the year. Tribal advocates will now focus on advocating for the reauthorization in 2025. Mr. Yandell commented that if the Republicans control both the House and Senate in 2025, the Republicans in favor of the NAHASDA reauthorization (e.g., Senator Murkowski and House Appropriations Committee Chairman Tom Cole (R-OK)) may face less resistance from Democrats such as Representative Maxine Waters, who has repeatedly opposed the reauthorization. As a result, Mr. Yandell speculated that there is a chance that Congress will actually successfully pass the NAHASDA reauthorization in 2025.

c. Other Tribal Housing Bills

Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act (VHBIA) (H.R.8371). The VHBIA is intended to improve healthcare and benefits for veterans. The bill includes provisions that would improve the Native American Director Loan (NADL) program by increasing Native American veterans' access to housing loans and reducing interest rates for the refinancing of existing NADL loans. The House passed the VHBIA on November 18, 2024 and the Senate is now considering the bill. Joanna Donohoe stated that if the bill is voted out of the Senate Committee on Veterans' Affairs, then the full Senate will likely pass the bill.

d. Extension of Housing Opportunity Through Modernization Act (HOTMA) Compliance

On December 5, 2024, HUD issued Notice PIH 2024-37, extending the HOTMA compliance date for tribes and TDHEs. HOTMA was enacted in 2016, and on February 14, 2023, HUD published a final rule implementing Sections 102 and 104 of HOTMA (88 Fed. Reg 9600 (Feb. 28, 2023)). HOTMA does not directly apply to NAHASDA. However, since the HOTMA amendments and the implementing regulations revised how annual income is calculated for Section 8 purposes (*see* 24 C.F.R. 5.609), HOTMA indirectly impacts all tribes and TDHEs who use the Section 8 methodology to calculate income. PIH Notice 2024-37 gives tribes and TDHEs

² *Id.* §§ 3410(b)(3), 3413(a)(2).

an additional year, until January 1, 2026, to implement and come into compliance with the new Section 8 definition of "annual income" under the IHBG. The Notice PIH 2024-37 further states that until January 1, 2026, tribes and TDHEs can choose to either adopt the new HOTMA definition or continue to rely on the definition of annual income (contained at 24 C.F.R. 5.609) prior to the HOTMA changes when determining annual income for families.

e. Tribal Intergovernmental Advisory Committee (TIAC)

The next HUD TIAC meeting will be held on January 5, 2024. The TIAC will continue to meet virtually at least monthly. On November 5, 2024, HUD published a [list of the 2025 committee members](#). There are a number of new tribal representatives who will be serving on the TIAC. Jacqueline Pata, TIAC Co-Chair and First Vice President of the Central Council of Tlingit and Haida Indian Tribes of Alaska, remarked that the TIAC will continue to work on advocating for internal streamlining of HUD programs and requirements to reduce burdens on tribes and TDHEs. Ms. Pata also commented that the TIAC is considering ways that TDHEs can address the rising costs of construction and homeownership insurance. Ms. Pata emphasized that the TIAC does not replace tribal consultation and is instead a vehicle for tribes to make recommendations to HUD. Other TIAC members commented on the impact that TIAC has had, noting that TIAC made a huge impact in increasing the NAHASDA appropriations funding in 2024.

f. Other Matters

The NAIHC Legislative Committee meetings will continue to be held on the first Thursday of each month via Zoom. NAIHC will hold its Annual Convention in Washington D.C. on February 4–6, 2025.

II. NAIHC Plenary Session

NAIHC held a Plenary Session on December 10, 2024. Bobby Yandell, NAIHC Board of Directors Chairman and Executive Director of the Housing Authority of the Choctaw Nation, and outgoing NAIHC Executive Director Douglas Marconi, Sr., gave opening remarks.

Jad Atallah, Director of the Office of Performance and Planning of HUD's Office of Native American Programs (ONAP), gave an update on ONAP programs. Mr. Atallah remarked that ONAP often receives more competitive applications for the IHBG competitive program than ONAP has enough money to fund. He remarked that this high number of competitive applications demonstrates the success of the IHBG competitive program, which can be a talking point in requesting that Congress increase appropriations for the program.

Mr. Atallah also commented that the TIAC has been an effective way for the staff in other HUD programs (non-ONAP) to actually hear what tribes have to say, since those other HUD programs do not participate in direct tribal consultation. The TIAC is therefore a forum for other HUD staff to hear the impact of HUD programs on tribal areas and also hear about the obstacles that tribes and TDHEs face in obtaining funding through those programs.

a. Plenary Panel: Legislative Priorities for the 119th U.S. Congress

As part of the Plenary Session, NAIHC hosted a Plenary Panel that addressed the Legislative Priorities for the 119th U.S. Congress. Matt Vogel, Policy Lead for Community Development and Infrastructure for the National Congress of American Indians (NCAI) moderated the panel. The panelists included Bobby Yandell, Executive Director of the Choctaw Nation Housing Authority; Brandi Liberty, CEO of The Luak Group; and Jad Atallah, Director of the Office of Performance and Planning of HUD ONAP.

Mr. Vogel opened the panel by asking each panelist what the biggest risks are to tribes and TDHEs if NAHASDA is not reauthorized. Mr. Atallah expressed his surprise that tribal leaders have been talking about this issue for nearly twelve years without NAHASDA being reauthorized, as NAHASDA expired in 2013. Mr. Atallah noted, however, that most Congressionally-mandated HUD programs are expired, and have been for decades. Mr. Atallah emphasized that despite the expiration, NAHASDA programs continue to "live on" because Congress annually appropriates money to each program without affirmatively reauthorizing NAHASDA as a whole. Mr. Atallah then explained that the biggest risks are that (1) tribes are unable to successfully advocate for reform to or modernization of NAHASDA while it is expired and not being considered by Congress and (2) the incoming Presidential administration has indicated its intention to stop funding executive branch programs that lack an active Congressional mandate.

Ms. Liberty next answered Mr. Vogel's question about the risks of not reauthorizing NAHASDA, stating that uncertainty will remain about continued funding levels for FY 2026 and beyond. Mr. Yandell agreed with Mr. Atallah that the result of the recent presidential election raised anxiety levels surrounding the continued funding and funding levels of NAHASDA programs. Mr. Yandell also explained that a NAHASDA reauthorization would trigger negotiated rulemaking (*see* 25 U.S.C. § 4116(b)(2)(B)), providing tribes and THDEs an opportunity to revise and modernize relevant HUD regulations.

Mr. Vogel then asked the panelists a second question, surrounding the importance of, and best practices for, coalition-building. Mr. Atallah noted that "your voice matters" is not a cliché, explaining that coalitions can be particularly successful before executive branch officials or members of Congress with individual stories or testimonies regarding particular programs. Ms. Liberty highlighted that "coalition building is capacity building," emphasizing that groups must collaborate and share resources in order to expand the efficacy of their advocacy. Mr. Yandell discussed HUD's TIAC, categorizing the presidentially-directed TIAC as one of the best recently created coalitions in the Indian housing space. Specifically, Mr. Yandell explained that a position paper on the flat lining of funding for NAHASDA block grant programs is what ultimately convinced Congressional appropriations leaders such as Representative Tom Cole to increase NAHASDA program funding levels in FY 2024. Piggybacking off of Mr. Vogel's comments regarding recent increased funding for NAHASDA programs, Mr. Vogel asked whether the increases were enough. Mr. Atallah noted that tribes were "out of the hole," although continued advocacy is necessary, as the FY 2024 increase simply returned the programs back to their 1998 funding levels, when adjusting for inflation.

Mr. Vogel concluded the session by asking the panelists how tribal leaders could be more successful in implementing NAHASDA programs. Ms. Liberty noted that a history of late program audits can negatively impact future competitive grant proposals. Additionally, Ms. Liberty encouraged tribal leaders to understand the value of grant writers, consultants, and others with subject matter expertise, stating that tribes sometimes need to expend funds upfront in order to package together a competitive Notice of Funding Opportunity ("NOFO") response. Mr. Yandell expressed hope that the recent election cycle may create an opportunity for NAHASDA reauthorization.

III. Breakout Sessions

We presented at or attended several of the relevant breakout sessions at the Legal Symposium and report on them below.

a. Breakout Session: Build America Buy America (BABA) Act

Ed Clay Goodman, Partner, and Cari L. Baermann attorney, at Hobbs Straus Dean & Walker, gave a presentation on how to comply with BABA requirements. On December 13, 2024, the U.S. Department of Interior (DOI) published a proposed [Multi-Agency Tribal Public Interest BABA Waiver](#) ("Tribal BABA Waiver") in the Federal Register. In summary, if adopted, the proposed Tribal BABA Waiver would (1) exempt awards and subawards of \$2.5 million or less to tribes and TDHEs from BABA requirements for five years; and (2) exempt manufactured products from BABA requirements between the effective date of the Tribal BABA Waiver and September 30, 2026, regardless of the federal award amount. Please see our December 13, 2024 memorandum on the Tribal BABA waiver for more information.

b. Breakout Session: Updates on Homeless Programs for Tribal Veterans; Homelessness in Tribal Communities

Madolyn Gingell, National Coordinator, U.S. Veterans Affairs (VA) Legal Services for Veterans (LSV); Merideth Malpass, National HUD-Veterans Affairs Supportive Housing (VASH) Regional Coordinator; and Hilary Atkin, ONAP Director of Grants Management, gave a presentation on updates on the VA's homeless programs available for tribal veterans. Brigid Korce, a consultant with BeauxSimone Consulting, and Robin Thorne, Vice President, RT Hawk Housing Alliance, gave a presentation on the Tribal HUD-VASH (T-HUD-VASH) program. A summary of both presentations is below.

Ms. Gingell and Malpass provided an overview of the LSV. The LSV provides outreach, training, and coordination intended to increase veterans' access legal services. The LSV is a component of the Veterans Justice Programs and provides grant funds to public or nonprofit private entities that provide legal services to veterans experiencing or at risk of homelessness. Ms. Gingell remarked that providing legal services in conjunction with other services to veterans through the VA can make a more lasting beneficial impact for veterans. Veterans who are homeless or at risk of homelessness can call the National Call Center for Homeless Veterans at 877-424-3838.

Ms. Atkin commented that the T-HUD-VASH is a program developed in 2015 to provide tribal veterans with HUD-VASH program support in their tribal communities. The T-HUD-VASH program was developed in part because the regular HUD-VASH rental assistance vouchers cannot be used on tribal reservations. In the T-HUD-VASH program, ONAP provides hybrid IHBG funding to participating tribes for rental assistance and supportive services for Native American veterans who are homeless living on reservations or in other tribal areas. As part of the T-HUD-VASH program support, the VA provides case management and supportive services to veterans in the program.

Tribes participating in the T-HUD-VASH program are able to determine where to house the veterans — either on the reservation or with private landlords off the reservation within the tribe's service area. However, currently, tribes cannot use HUD-VASH vouchers to house tribal veterans in Formula Current Assisted Stock (FCAS) units. Ms. Thorne remarked that if a TDHE provides HUD-VASH services to tribal veterans, the TDHE is able to receive administrative fees to cover the program expenses.

Ms. Thorne recommended that TDHEs make sure to have policies and procedures specific to the T-HUD-VASH program. She noted that these policies can make it clear how the TDHE will use the HUD-VASH subsidy, what the eligibility requirements are for veterans, and how the TDHE will manage a waitlist for veterans.

c. Breakout Session: Monitoring Through the Lens of the Reviewer

Amber Hunter, ONAP Grant Evaluation Director, gave a presentation on "Monitoring Through the Lens of the Reviewer."

Ms. Hunter opened the presentation by explaining that it is ONAP's position that monitoring is an opportunity for tribes to showcase to ONAP the great work that is being done in the housing space. With this framing in mind, Ms. Hunter first discussed ONAP's standard risk assessment, which is used to determine which recipients are to be monitored in a particular fiscal year. Specifically, Ms. Hunter detailed the standard risk assessment factors that ONAP currently utilizes (enumerated in full at 24 C.F.R. § 1000.503(a)), including: annual grant amount and disbursed amounts; months since the recipient was last monitored; whether an overdue or delinquent audit or Annual Performance Report (APR) exists; whether open monitoring findings exist; and whether the recipient is conducting self-monitoring activities.

Next, Ms. Hunter explained that at least 30 days prior to an on-site monitoring visit, a recipient will receive a notice letter. Often times, according to Ms. Hunter, the notice will be paired with an electronic request for "pre-visit documents." While Ms. Hunter explained that pre-visit document submission greatly assists, and provides context for, HUD's on-site monitoring activity, she also stated that such pre-visit submissions are not required by NAHASDA. Noting that file size and file sharing concerns have complicated electronic document transmission, Ms. Hunter explained the Document Repository and Organization Portal (DROP) tool, a HUD document sharing program made for this particular purpose.

Following this, Ms. Hunter shared some general statistics regarding ONAP monitoring over the last decade, stating that on average, 37 recipients are monitored annually, and each Final Monitoring Report (FMR) results in approximately 2.4 findings. Ms. Hunter then briefly explained the most common monitoring areas for which findings have been issued, namely, procurement and contract administration, financial and fiscal management, and environmental review. Ms. Hunter recommended that recipients review HUD checklists pertaining to the monitoring areas in advance of grant close-out or on-site monitoring.

d. Breakout Session: Making Continuum of Care Funding Work Within Tribal Communities

Brigid Korce, Consultant, BeauxSimone Consulting, gave a presentation on "Making Continuum of Care Funding Work Within Tribal Communities." Ms. Korce opened the panel by noting her excitement that tribes, in 2021, became eligible for HUD's Continuum of Care (CoC) funding. Ms. Korce stated that the purpose of her discussion was to inform tribal leaders about what a CoC is, and the respective benefits and considerations to be aware of before attempting CoC participation. Ms. Korce explained that CoC funding is not managed by ONAP, but instead is a general HUD program aimed at alleviating homelessness. The program alleviates homelessness by providing both rapid rehousing and permanent housing support, in both urban and rural communities. Ms. Korce explained that CoCs are planning bodies, each of which encompass a particular geographic area in a state, and which manage competitive homelessness and re-housing grant awards. Each CoC includes the following components:

- The CoC Board (the CoC's governing body that operates, and is entitled to act on behalf of, the CoC);
- A Collaborative Applicant, who compiles and submits the CoC's annual competitive application for HUD program funds;
- The Homeless Management Information System ("HMIS") Lead, who manages the day-to-day operation of the CoC's federally mandated data collection tools; and
- Grant Recipients, the governmental or nonprofit entities providing services.

Ms. Korce stated that the CoC funding "competition" starts in the summer of each year, between late June and early August, when HUD's annual NOFO for the CoC program is released. The Collaborative Applicant, at the direction of the CoC Board, compiles, drafts, and submits an application to HUD for the prospective recipients in their CoC's geographic area. HUD then awards program funds (in excess of \$3.5 billion in FY 2024) to the selected recipients, through each recipient's CoC. Ms. Korce then explained CoC recipient project types, including: permanent supportive housing (PSH), or long-term rental assistance to the chronic homeless; rapid re-housing (RRH), or temporary subsidies to individuals undergoing a life event leaving them unhoused; joint transitional housing, which is a mixture of PSH and RRH uses; homelessness supportive services, such as counseling; and funding to operate the HMIS system.

Ms. Korce then detailed what tribal participation in CoCs could look like in the future, noting that only a few tribes or tribal organizations have engaged with the CoC program. Ms. Korce noted that although a tribe (or a group of tribes working together) could form a CoC, tribal participation could start as a tribe or TDHE acting as a Grant Recipient or sub-grantee (who receives funds from the Grant Recipient). Ms. Korce detailed the Minnesota Tribal Collaborative

to Prevent and End Homeless, a partnership between six Minnesota tribes that acts as a sub-grantee within various CoCs within Minnesota.

Finally, Ms. Korce explained the benefits and considerations underscoring prospective tribal involvement in a CoC. Ms. Korce remarked that the benefits include increased funding and an increased role in regional housing policy. She also recommended that tribes and TDHEs consider data sovereignty concerns and tribal member prioritization concerns. (As a HUD program created outside of NAHASDA, recipients must comply with the Civil Rights Act; some CoC leaders interpret this as prohibiting Indian-only awards).

e. Breakout Session: Pandemic Grants—Making Progress and Closing Out

Hilary Atkin, ONAP Director of Grants Management, gave a presentation on "Pandemic Grants—Making Progress and Closing Out." Ms. Atkin started the session off with some background, detailing the Coronavirus Aid, Relief, and Economic Security (CARES) Act, from 2020, and the American Rescue Plan Act (ARPA), from 2021. Both pandemic-era stimulus bills provided imminent threat funding to NAHASDA programs. The CARES Act provided \$200 million for the IHBG program and \$100 million for the ICDBG program, while the ARPA provided \$450 million and \$280 million for IHBG and ICDBG, respectively. Ms. Atkin emphasized the status of these grants. Over 10% of CARES Act grants remain undisbursed, while over 30% of ARPA grants remain undisbursed. Ms. Atkin noted that ONAP encourages recipients to make progress toward closing out pandemic-era grants. CARES Act funding expires on September 30, 2029, and ARPA funding expires on September 30, 2030. If tribes or TDHEs do not spend the CARES Act grants or ARPA grants by those deadlines, the grant funding will no longer be available for use.

Ms. Atkin noted that recipients may receive close out assistance from HUD in many ways, including scheduling planning meetings, requesting Technical Assistance (TA), and attending ONAP or ONAP-sponsored trainings and clinics. Specifically, Ms. Atkin announced that there will be ONAP ARPA implementation clinics in the summer of 2025, and more information is to come. Finally, Ms. Atkin described the HUD amendment process, indicating that recipients who have unused pandemic-era funds should consider seeking ONAP approval for a change-in-use. Ms. Atkin emphasized that permissible uses vary slightly across the four pandemic grants (IHBG-CARES, IHBG-ARPA, ICDBG-CARES, and ICDBG-ARPA), but recommended that interested recipients first review ONAP details, guidance, and resources available online: https://www.hud.gov/program_offices/public_indian_housing/ih/Covid_Recovery.

f. Breakout Session: Navigating the HUD Enforcement Process

Edmund C. Goodman, Partner, Hobbs, Straus, Dean & Walker, LLP ("Hobbs Straus") and M. Vincent Amato, also with Hobbs Straus, gave a presentation on "Navigating the HUD Enforcement Process."

Mr. Goodman opened the session by explaining Congress' authorization of HUD monitoring of NAHASDA programs, and the NAHASDA provisions relevant to HUD monitoring and enforcement of grant recipients (25 U.S.C. §§ 4161-4168). Mr. Goodman explained revisions

to NAHASDA's initial 1996 text through Congressional reauthorizations in both 2000 and 2008 and, correspondingly, subsequent negotiated rulemakings that resulted in modifications to NAHASDA's implementing regulations on each occasion. Mr. Goodman emphasized that HUD must provide recipients with "notice and an opportunity for a hearing" prior to taking any remedial action, unless certain emergency circumstances exist in which a HUD action may be temporarily taken prior to a to-be-scheduled hearing. Mr. Goodman explained that there are a number of steps for a tribe or THDE to go through prior to a remedial action being taken, and each step provides opportunities for the recipient to either come into NAHASDA compliance or challenge ONAP's determinations.

Next, Mr. Amato described the HUD enforcement process from start-to-finish, which includes the issuance of following successive documents:

- Draft monitoring report (DMR) with proposed findings;
- Final monitoring report (FMR) with findings, corrective actions, and timelines;
- Status letter(s);
- Letter of warning (LOW);
- Notice of intent (NOI) to impose remedies; and
- Notice of imposition of remedies (IOR)

Mr. Amato also briefly discussed the hearing process before a HUD administrative law judge (ALJ), in the event a recipient was unable to rectify ONAP's findings and corrective actions prior to the issuance of an IOR.

Following this, Mr. Amato explained the federal regulations relevant to HUD monitoring, located at 24 C.F.R. Part 1000, Subpart F. Specifically, Mr. Amato described on-site monitoring procedure and notice requirements, as well as the basics of the HUD standard risk assessment used in determining the frequency and priority of monitoring for each recipient. Finally, Mr. Amato described ONAP's post-review report procedure, which requires that: (1) HUD issue a DMR within 60 days of completing its review; (2) the recipient provide any comment within 60 days of DMR receipt, subject to one 30-day extension by-right and additional extensions at HUD's discretion; and (3) HUD consider the comments and issue an FMR within 30 days of its receipt of recipient comments.

Next, Mr. Goodman described the actions that HUD must take prior to sanctioning a recipient (24 C.F.R. § 1000.530), such as the issuance of a LOW. Mr. Goodman explained that failure to address performance problems outlined in either the FMR, status letters, or LOW may result in the imposition of sanctions. Mr. Goodman also described HUD's understanding of "reasonable notice and opportunity to be heard"—which HUD is statutorily required to provide to NAHASDA recipients—by describing HUD's sanction notice requirements and hearing requirements. Mr. Goodman concluded the presentation by discussing ongoing issues in the HUD monitoring process, such as Line of Credit Control System (LOCCS) edits, where HUD electronically withholds IHBG funds from recipients, pending a recipient's document production or other action, to alleviate HUD's concerns. Mr. Goodman explained that, in his view, the practice

of LOCCS edits is contrary to NAHASDA and its implementing regulations because it impermissibly enables HUD to impose preconditions on receipt of funds.

g. Hot Topics in Employment Law

Tal Moore, Director of Development, National Native American Human Resources Association (NNAHRA), gave a presentation on current employment issues and how TDHEs can effectively manage staff.

Mr. Moore recommended that tribes and TDHEs create ordinances, policies, standard operating procedures, and employment handbooks to govern employment matters. He noted that each of these documents serve a different but useful purpose. First, the ordinances create the employment laws for the tribes and TDHEs. Second, the policies and standard operating procedures then provide guidance to human resources (HR) managers and the employer on how to implement the employment law. Finally, employment handbooks lay out the employment policies in a simplified and accessible manner for the employees.

Mr. Moore also recommended that job descriptions clearly and accurately describe the job for each employee. Providing clear and accurate job descriptions will help ensure that an employee is qualified for the position and is willing to carry out the functions of that job. Mr. Moore remarked that having clear policies that describe the expectations of employees and providing regular feedback to each employee is a good way to ensure that employees perform well.

Mr. Moore remarked that a tribe or TDHE should carefully consider which federal employment laws it is required to follow. Employment laws include Federal Labor Standards Act (FLSA), Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), Occupational Safety and Health Administration (OSHA), and Employee Retirement Income Security Act of 1974 (ERISA). Some, but not all, of these laws apply to tribes. Mr. Moore recommended that if a tribe or TDHE is required to follow these laws, it is a best practice to describe these laws in its policies and clarify how the tribe or TDHE will implement these federal employment laws. On the other hand, if a tribe or TDHE is not required to comply with a particular federal employment law, the tribe or TDHE should carefully consider whether it explicitly incorporates those laws in its policies.

IV. Closing Plenary Session

The Legal Symposium concluded with a plenary session on December 9, 2024. Outgoing NAIHC Executive Director Douglas Marconi, Sr., and Bobby Yandell, NAIHC Board Chairman, gave closing remarks. Mr. Marconi stated that Linda Lee Retka will be serving as the NAIHC Interim Executive Director.

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.