TRIBAL INTERGOVERNMENTAL ADVISORY COMMITTEE

U.S. Department of Housing and Urban Development

Document Packet Summary

The following papers were submitted to HUD leadership by the TIAC from September 2022 through September 2025. This compilation includes:

•Topics and notes discussed during five prior TIAC Leadership meetings

•Documents responding to public comment requests

•Formal correspondence to the Agency

•Policy recommendations to HUD senior leadership involving statutes, regulations, and HUD guidance

•Analyses addressing barriers to housing

•Technical assistance commendations focused on self-determination and flexibility

Enclosed Papers

1. 2025 Fairness in Funding
2. Reauthorizing the Native American Housing and Self-Determination Act of 1996
3. Environmental Review NEPA Revisions
4. Previous TIAC Meeting Recommendations
5. Streamlining Letter
6. Indian Health Services Letter
7. Construction Costs
8. HUD TIAC BABA Consultation Comments
9. TIAC Housing Counseling Comments
10. TIAC ICDBG Program Comments
11. Technical Assistance Improvements

2025 Fairness in Funding

Fundamental Fairness in Indian Housing Funding

Talking Points:

- The Tribal Intergovernmental Advisory Committee requests equity and fairness in funding increases. That should be the standard, not something we have to request.
- In future budget formulations the Fiscal Year 2024 appropriations should be the baseline for IHBG appropriations. Inflationary factors should be included in the appropriations requests.
- The Indian Housing Block Grant should be made mandatory funding due to the Trust responsibility of the US Government rather than discretionary.
- NAHASDA is the primary mechanism for developing affordable housing in Tribal areas.
- NAHASDA combined 8 Federal programs into a single block grant for ease of delivery and extinguished Tribes' ability to partake of these.
- For over 20 years NAHASDA funding has been eroded due to inflation while the rest of HUD, including the eight programs that Tribes are not eligible for, particularly Section 8, kept pace with inflation and NAHASDA was flat funded.
- Even after a large increase in 2024, the Indian Housing Block Grant's purchasing power is at the 2000 level. Compared to the rest of HUD which has had an overall increase of 50% (inflation adjusted).

Appropriations: HUD vs IHBG FY 2000 to FY 2025		
	HUD OVERALL	**IHBG**
FY 2000 Nominal Appropriation	$26 BB	$620 MM
FY 2000 % of HUD Budget		2.4%
FY 2025 Nominal Appropriation	$81 BB	$1.111 BB
FY 2025 % of HUD Budget		**1.37%**
% Change in Funding	**212%**	**79%**
Inflation-adjusted to FY 2000	**+ 37 BB**	**- $16 MM**
Inflation-adjust % Change	**+ 70%**	**- 2.6%**

HUD's budget alone does not explain why the Indian Housing Block Grant is ignored over time. HUD's budget has grown hugely in nominal terms and well above the rate of inflation. In comparison to HUD's overall budget, the IHBG has shrunk in purchasing power since the year 2000. In terms of nominal growth and purchasing power this shows a preference for Urban communities over the mostly rural tribal communities.

<u>Introduction</u>

The Native American Housing Assistance and Self Determination Act (NAHASDA) is the primary mechanism for funding affordable housing for Native Americans. NAHASDA's landmark breakthrough was in recognizing the Self Determination rights of Tribes to respond to their needs for affordable housing rather than waiting for Washington, DC-based staff to adjudicate and approve competitive housing plans. **<u>NAHASDA consolidated eligibility for eight (8) HUD funded programs that were previously available to tribes into a single block grant, at various times called the Indian Housing Block Grant or Native American Housing Block Grant. Importantly, tribes were then not able to apply for or receive the funding streams to which they had been previously eligible.</u>** The unfortunate result is that Native American housing needs were easier to silo and went unaddressed for decades even as HUD's budget increased both in absolute terms and inflation-adjusted terms. In short, the Indian Housing Block Grant (IHBG) has been severely underfunded compared to the rest of HUD's programming.

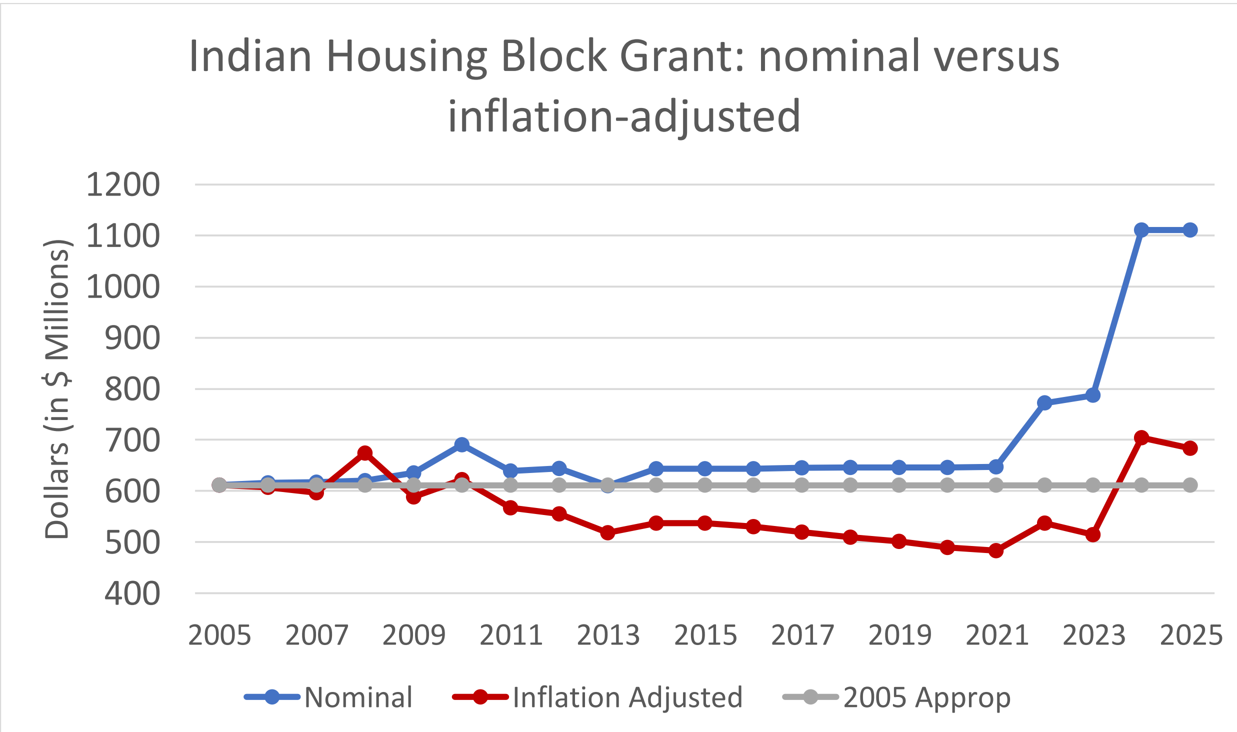
<u>Federal Trust Responsibility</u>

The US Federal Trust Responsibility to Indian Tribes stems from treaties made between the United States of America and Indian Tribes starting in the 18^{th} Century. The foundation of this responsibility is actually in the US Constitution, where the only two affirmative rights that exist in America are to Indian Tribes. From the founding of the USA there were commitments made to ensure that exercise of sovereignty by the USA over Indian Tribes in foreign matters was met with promises to see to Indians' general welfare. This responsibility extends to that of the Federal government to see to the housing needs of Native Americans. The US Commission on Civil Rights report *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* released in 2018 makes clear that **<u>affordable housing is part of the US Government's Trust responsibility to Native Americans</u>**. That Trust responsibility goes beyond the social contract theory underpinning many of the aid programs for people living in poverty. The Trust responsibility to Native Americans was assumed by the US Federal Government because Native Americans were warred upon, displaced, disenfranchised, and even had their Tribes' Federal recognition terminated as late as the 1950's.

Executive Order 14112 "Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination" provides a framework for righting this historical injustice. Section 4 states "The Director of the Office of Management and Budget (OMB) and the Assistant to the President and Domestic Policy Advisor (Domestic Policy Advisor) shall lead an effort, in collaboration with WHCNAA, to identify chronic shortfalls in Federal funding and support programs for Tribal Nations, and shall submit recommendations to the President describing the additional funding and programming necessary to better live up to the Federal Government's trust responsibilities and help address the needs of all Tribal Nations …." This Executive Order has clear timelines and reporting requirements to address the funding inequities that previously existed. <u>The TIAC encourages policy makers to live up to this commitment in budget formulation and in budget enactment.</u>

History of Underfunding and Impact

Looking solely at the Indian Housing Block Grant versus inflation, we can see a pattern of underinvestment for decades. That pattern was only broken beginning in Fiscal Year 2022 thanks to Congressional members recognizing the immense need and underinvestment in Tribal housing. In FY 2024, it took the personal attention of the Chairman of House Appropriations to inflation adjust the IHBG to the year 2000. In other words, one of the most powerful decision makers on the Federal budget had to make the IHBG a priority to address 25 years of underfunding.



It has been thoroughly documented that the housing conditions are substantially worse in Native American and Alaska Native households than all U.S. households. HUD's own study tribal housing needs found that 68,000 new homes were needed to relieve the incredible overcrowding and unsafe or unsanitary conditions for Native Americans.[1] For example, in Western Alaska, which has the highest concentration of Alaska Native people and indigenous first-language speakers in the country, nearly 40% of homes are overcrowded, a rate 10X higher than the rest of the United States.[2] This was not always the case. **HUD's 2017 study found that tribal housing providers had been producing housing at rates equal to pre-NAHASDA days but starting less than a decade**

[1] Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs dated January 2017- https://www.huduser.gov/portal/publications/HNAIHousingNeeds.html

[2] Alaska Housing Finance Corporation, 2018 Alaska Housing Assessment, https://www.ahfc.us/pros/energy/alaska-housing-assessment/2018-housing-assessment/ancsa-overcrowding

after the Indian Housing Block Grant was created, housing production began slowing greatly. The study concluded that "Limited funding is a key constraint for many tribes who could increase their rate of housing production if they had more funding."[3] **A Quite Crisis, a 2003 report by the US Civil Rights noted that "[p]laced in context of HUD's overall budget authority, the housing needs of Native Americans are disproportionately underfunded."[4]**

One of the most pernicious ways that underfunding has eroded new housing construction is the tradeoff between maintenance & operation and capital construction for every dollar of federal funding. Affordable housing does not pay its own maintenance & operations from rent. Services such as snow removal (which cost Cook Inlet Housing Authority over $150,000 in a one-week period in November 2023), electricity for common areas, and compliance staff are all expenses that are not fully covered by rent charged to low-income tenants. For 20 years the IHBG was stagnant and eaten away by inflation. TDHEs are required to ensure their existing units are safe, decent, and affordable. **That means capital construction was the last consideration in spending decisions. The knock-on effect of fewer dollars to construction is that there were fewer dollars for leveraging**, further reducing the opportunity for TDHEs to develop new housing that is sorely needed across the US. That is finally changing in the last few fiscal years, but we cannot be content with just catching up to inflation.

Total Impact of Funding Inequity

In total terms, what does all of this add up to in lost housing units and total budget authority? The IHBG appropriation for FY 2024 at $1.111 Billion was the inflation-adjusted appropriation of $611 Million from the year 2000. What is missing is the 23 years between 2000 and 2024 that were not inflation adjusted at the same level as the rest of HUD's programs. **The cumulative loss from that disparity between HUD's overall budget and the IHBG is over $4 Billion**. That has real impacts on housing development. In the early 2000s, HUD's own report showed an average of 1,900 homes constructed or renovated. By FY 2022 that had fallen to 562. In total, the loss of houses developed or renovated is over 9,000, or over 10% of the 68,000 homes needed to alleviate overcrowding and unsafe conditions in Tribal communities.[5]

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[3] Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs dated January 2017- https://www.huduser.gov/portal/publications/HNAIHousingNeeds.html

[4] A Quiet Crisis – US Civil Rights Report dated July 2003- https://www.usccr.gov/files/pubs/na0703/na0204.pdf

[5] Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs dated January 2017- https://www.huduser.gov/portal/publications/HNAIHousingNeeds.html

Reauthorizing the Native American Housing and Self-Determination Act of 1996 (NAHASDA): Policy Recommendations

Tribal Intergovernmental Advisory Committee
U.S. Dept. of Housing and Urban Development

Reauthorizing the Native American Housing and Self-Determination Act of 1996 (NAHASDA): Policy Recommendations

1. Environmental Review Proposals

a. Exemptions & Waivers

- Allow HUD to grant exemption waivers for Tribes/Tribally Designated Housing Entities (TDHEs) if other federal agencies provide similar exemptions (e.g., Department of Transportation for road development).
- Provide waivers exempting Tribes/TDHEs from the Environmental Review Record (ERR) for projects under a high-dollar threshold (minimum $250,000 or highest amount deemed acceptable by HUD).
- Exempt property acquisitions from ERR when funded with non-federal resources, including long-term equipment such as solar panels.
- Exempt projects with minimal federal funding (less than $250,000) from all HUD environmental requirements, including the National Historic Preservation Act and Endangered Species Act.
- Exempt rehabilitation projects from environmental requirements when there is no footprint change, ground disturbance, or National Register of Historic Places listing.

b. Certifying Official Authority

- Allow Tribes to designate a TDHE as a certifying official for environmental reviews.

c. Radon & Lead Testing

- Rescind radon guidance (CPD-23-103) for Tribes and TDHEs.
- Permit initial use of store-bought lead test kits, requiring full lead inspection only if initial results are positive.

d. Flood Plain & Insurance Requirements

- Provide waivers under flood plain management requirements for small Tribes/TDHEs.
- Exempt Tribes/TDHEs from flood insurance requirements, similar to exemptions for State Community Development Block Grants (CDBG).

e. HUD Part 51 & U.S. Army Corps General Permits

- Rescind HUD's Part 51 guidance regarding proximity to hazardous operations and noise abatement.
- Allow HUD ERRs for Tribes/TDHEs to comply under the U.S. Army Corps General Permit for wetlands.

f. Streamlining Environmental Review Process

- Allow a single Environmental Review document when multiple federal funding sources are used in a project.
- Permit Tribes/TDHEs to assume full Environmental Review responsibilities.
- Allow HUD ONAP Environmental Review processes when multiple HUD funding streams are utilized.

2. Consolidation of Reporting Requirements

- Require Tribes to submit a single performance report regardless of how many HUD grants they receive, reducing administrative burdens.
- ONAP's APR could serve as the primary performance report, sufficient for other HUD offices.

3. Authorization Period

- Reauthorize the Indian Housing Block Grant and Native Hawaiian Housing Block Grant programs through FY2035 (10 years).

4. Build America, Buy America Act (BABA)

- Exempt Tribal housing programs from BABA requirements.

5. Continuum of Care (CoC)

- Recognize tribal governance structures as meeting governance board requirements of CoCs.
- Exempt Tribes from certain Fair Housing requirements, aligning with NAHASDA.
- Remove certification of consistency with a local consolidated plan, requiring only consistency with the Indian Housing Plan.

6. Housing Counseling

- Remove the Housing Counseling Certification requirement for Tribes/TDHEs or, at minimum, exempt Tribes receiving less than $500,000 under NAHASDA.
- Make Tribes and TDHEs eligible for Housing Counseling Grants.

7. Procurement

- Allow Tribes to set their own procurement standards, consistent with state governments.
- Increase the De Minimis Exemption from $5,000 to $15,000, with a micro-purchase threshold set at 150% of the federal level (currently $10,000).

8. IHS Sanitation Facilities Construction

- Allow IHS funds to be used for sanitation facilities in housing construction or renovation projects.

9. Community-Based Development Organization (CBDO) Status

- Automatically qualify Tribes and TDHEs as CBDOs for new housing construction purposes.

10. Tribal HUD-VASH Rental Assistance for Homeless Veterans

- Make Tribal HUD-VASH a permanent program.
- Set a minimum of 5% of any HUD-VASH incremental appropriation for new Tribal HUD-VASH vouchers/grants.

11. New Rent Rule Provision

- Allow Tribes/TDHEs to set rental maximums based on self-sufficiency policies instead of the 30% income rule.
- Align tribal flexibility with Public Housing's Moving to Work program, supporting economic mobility.
- Remove provisions related to student housing assistance and rental rule application to Tribe/TDHE-owned units from bill.

12. Reports to Congress

- Require an annual report to the Senate Committee on Indian Affairs and the House Committee on Financial Services, making it publicly available.

13. 99-Year Leasehold Interest in Trust or Restricted Lands

- Extend the lease period from 50 years to 99 years to improve housing development financing.

14. Block Grant Amendments for Native Hawaiian Housing

- Allow Native Hawaiian Housing Block Grant funds to be sub-granted by the Department of Hawaiian Homelands to nonprofits, overriding restrictive Hawaii State laws.

15. Section 184 Indian Home Loan Guarantee Program

- Expand the Section 184 program nationwide.
- Expressly allow Community Development Financial Institutions (CDFIs) to serve as Section 184 lenders.
- Permit direct loan endorsements by lenders, similar to FHA lenders.
- Require lenders with poor underwriting practices to indemnify HUD.
- Authorize the Section 184 program through FY2035.

16. Loan Guarantees for Native Hawaiian Housing (Section 184A)

- Expand the Section 184A program to all of Hawaii, beyond Hawaiian Homelands.
- Allow CDFIs to be eligible Section 184A lenders.
- Permit direct loan endorsements by lenders, similar to FHA lenders.
- Require lenders with poor underwriting practices to indemnify HUD.
- Authorize the Section 184A program through FY2035.

17. Tribal Delegation

- Recognize that a tribal resolution delegating authority to a TDHE allows the TDHE to implement awarded grants and programs without additional tribal approval.
- Include the ability for TDHEs to be designated as certifying officials for environmental reviews.

18. Technical Assistance

- Clarify that Technical Assistance (TA) under NAHASDA should be administered in alignment with the self-determination intent of NAHASDA, ensuring it strengthens the capacity of Tribes and TDHEs to provide housing. This could be achieved by having the NAIHC manage TA resources or by having them administered by ONAP.

Jacqueline Pata, Co-Chair
Tribal Intergovernmental
Advisory Committee

Jacqueline Pata

Date: April 7, 2025

Bobby Yandell Jr., Co-Chair
Tribal Intergovernmental
Advisory Committee

Date: 4-7-2025

Environmental Review NEPA Revisions

Tribal Intergovernmental Advisory Committee
U.S. Dept. of Housing and Urban Development

The Administration is conducting an extensive review of environmental requirements, revising NEPA regulations, and implementing related Executive Orders "Unleashing American Energy" and "Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis".

In furtherance of this effort, the TIAC is making the following recommendations to HUD on reforms that can be made to streamline burdensome requirements that Tribes and TDHEs experience when complying with environmental policies and rules. These reforms will help reduce the cost of developing affordable housing in Tribal communities and allow Tribes to carry out projects more efficiently, all while ensuring that appropriate environmental considerations are considered.

Project Exemptions

Mechanism: Statutory Change

- HUD needs to pursue a statutory provision that exempts projects receiving minimal Federal funding from all environmental requirements, including the National Historic Preservation Act and Endangered Species, etc.

Possible language would include the exemption of projects that are $250,000 or less, and for rehabilitation activities where there is no change in the building footprint, and/or no ground disturbing activities on a structure not listed on the National Register of Historic Places.

Current rules provide agencies with the ability to exclude projects with minimal Federal funding from NEPA review. However, it is not enough to exempt projects with minimal funding from NEPA because these projects are already categorically excluded from NEPA under HUD's existing regulations.

Duplicative Federal Environmental Reviews

Mechanism: Statutory Change

- HUD needs to pursue statutory provisions that require other agencies to accept HUD's environmental review without changes or additions when there are multiple federal funding sources in a project. These can be pursued through environmental provisions contained in the NAHASDA reauthorization bills.

Tribes often have multiple federal environmental reviews for the same project. Many Tribal housing projects are funded using multiple Federal sources including Interior, EPA, Energy, HHS, and HUD funding. Under current law, a separate environmental review process must be conducted for each source of Federal funding, and the review requirements of different agencies can differ or can be duplicative. In recognition of this issue, Congress directed ONAP to lead an interagency task force (Tribal Housing and Related Infrastructure Interagency Force (THRIITF)) to coordinate and streamline environmental reviews, however THRIITF's ability to streamline is limited; statutory provisions are needed to simplify the process.

Mechanism: Regulatory Change

- Additional regulatory coordination is needed to ensure that there is an efficient and clear process that allows Tribes to use other agencies' categorical exclusions and adopt other agencies completed environmental reviews.

Currently streamlining is limited to NEPA and does not address historic preservation, Endangered Species Act, or any of the other 14 related laws and authorities at 58.5. A statutory provision is needed to allow for the consolidation of the number of environmental reviews (ERs) for tribal housing projects that are funded using funding from more than one Federal agency. Tribes can use the HUD ER process to meet NEPA and related laws and will not have to duplicate ERs resulting in cost savings and reducing the time it takes to complete a project.

Responsible Entities (REs) and Certifying Officials (COs)

Mechanism: Statutory Change

- HUD needs to pursue statutory provisions authorizing Tribes to designate TDHE employees to be the Environmental Review Certifying Officer.

When designating a Responsible Entity (RE) and/or Certifying Official (CO) for a project's environmental review, Tribal Housing Authorities or Tribally Designated Housing Entities (TDHEs) must request ongoing and continuous tribal approval of the person who serves as Certifying Officer, waive sovereign immunity, and accept federal court jurisdiction for HUD NEPA compliance on behalf of the RE (Tribe). Continuous redesignations occupy the time and focus of Tribal leadership and government and increase the timeframe of ERs while adding more steps. NAHASDA recognizes that TDHEs may be authorized or established by a Tribe to act on their behalf. The Tribal Intergovernmental Advisory Committee recommends that if a Tribe approves, TDHEs should be granted the authority to act as the RE, ensuring that all environmental review processes are consistent with HUD requirements.

Wetlands Permitting

Mechanism: Research by HUD OGC to determine if Statutory, Regulatory Administrative changes are required.

- TIAC requests that HUD's Office of General Counsel conduct legal research to determine whether there is a statutory provision that prohibits HUD from using USACE regional general permits to demonstrate compliance with EO 11990 and/or HUD's wetland regulation.

Army Corps has a general permit for wetlands. HUD's wetlands regulations (24 CFR 55) follow EO 11990 for wetlands protection and HUD's definition of wetlands appears to be more restrictive than the statutory language used by Army Corps.

HUD's wetland regulations at 24 CFR 55 implement EO 11990 Protection of Wetlands. Clean Water Act establish protection for "jurisdictional wetlands". Impacts on jurisdictional wetlands require approval and permitting from USACE (a 404 permit). It has been HUD legal interpretation that because the definition of wetlands in EO 11990 is broader than a "jurisdictional wetland", Tribes can't use a USACE 404 permit to satisfy wetlands compliance. This interpretation is causing issues in Alaska. Alaska has a lot of wetlands. USACE issued regional general permit RGP-01 for residential and community developments. This general permit simplifies the process and imposes mitigation requirements. Allowing Alaskan Tribes to adhere to RGP-01 to meet HUD wetlands compliance would reduce confusion and increase efficiency.

Flood Insurance

Mechanism: Statutory Change

- Pursue statutory exemption from flood insurance for IHBG formula grants and/or exemption for HUD grants and/or loans. This aligns with the State CDBG program that is statutorily exempt from flood insurance requirements. (See 42 USC 4003(a)(3)).

FEMA's Flood Insurance Rate Maps (FIRMS) identify areas that require the jurisdiction to participate in the National Flood Insurance Program (NFIP) and require flood insurance to receive federal assistance. It can be very challenging and expensive for Tribes to participate in the NFIP. There are instances where Tribes cannot spend HUD funds to serve Tribal members on land that is non-Tribal where the local government refuses to participate in the NFIP. In other instances, the Tribe may be willing to have their Tribal land mapped, but FEMA is not able to offer enough financial support for the Tribe to comply with the requirements of NFIP which involve having a Certified Floodplain manager on staff and developing and implementing zoning and building permits. FEMA offers more assistance to non-Tribal communities to participate in NFIP.

Radon

Mechanism: Guidance Change

- Rescind CPD Notice on Departmental Policy for Addressing Radon in the Environmental Review Process

HUD developed a radon policy to require Tribes to consider radon in the environmental review process and in certain locations the policy requires radon testing. When radon testing finds radon at or above EPA recommended action level of 4.0pCI/L, then the Tribe must mitigate for radon. Due to the structure of HUD's environmental regulations, a minor rehabilitation activity such as replacing a roof would necessitate testing and mitigation in certain circumstances. HUD conducted Tribal consultation and public notice before issuing the sub regulatory Notice. Overall, Tribes were vocal in their dislike of the policy because there was no additional money to implement the radon requirement, creating an unfunded mandate. Without action from HUD, the Departmental Radon policy will be effective in January 2026.

- Rescind HUD Environmental Regulations at 24 CFR 51: Noise, Airport Clear Zones, and Acceptable Separation Distance.

These regulations are not statutorily required. Also, these regulations make it impossible for Tribes to adopt another agency's completed environmental review without additional work because the Tribe must supplement the other agency's federal review with these unique HUD environmental requirements.

Acquisition

Mechanism: Regulatory Waivers

- Issue waiver of eCFR :: 24 CFR 58.22 -- Limitations on activities pending clearance.

Existing HUD regulations prevent Tribes from using non-HUD funds to acquire property or purchase long term equipment after the Tribe has applied for HUD funds and before the environmental review is complete. Tribes (and other HUD grantees) struggle to gain site control in areas with competitive markets. In addition, Tribes also find it challenging to complete an environmental review on larger projects like infrastructure before they enter a contract to purchase components that may have a long lead time due to demand. The last version of CEQ NEPA regulations (finalized May 1, 2024) recognized these challenges and gave agencies discretion to carve out policies to allow acquisition and equipment purchase while environmental reviews are pending. However, those CEQ regulations are rescinded, and HUD did not update the regulations to align to the 2024 CEQ regulations. Issuing this waiver should be paired with

existing/ongoing Technical Assistance (TA) support from ONAP and TA providers to build Tribal business acumen and mitigate investment risks.
Additionally investigate using a different standard like the American Society for Testing and Materials (ASTM) E1527-21 standard is used for Phase I Environmental Site Assessments (ESAs) for banks.

Other Agencies' Categorical Exclusions

- Issue waiver of eCFR :: 24 CFR 58.36 -- Environmental assessments.

NEPA statutory amendments allow agencies to adopt another agency's categorical exclusions; however, HUD Office of General Counsel has advised that 24 CFR 58.36 prevents HUD from implementing this statutory allowance. This is important because HUD has not updated categorical exclusions in many decades and overall, they are more restrictive than other agencies and do not have allowances for infrastructure or rural development.

Federal Flood Risk Management Standard

Mechanism: Review Regulations and Regulatory Waivers

- Issue waiver of Federal Flood Risk Management Standard -embedded in HUD's Floodplain and Wetland regulations at 24 CFR Part 55

HUD should review 24 CFR 55 and determine what changes need to be made to comply with current Executive Orders. Waiver is already in HUD's final rule, but it may be removed or addressed during rulemaking.

President Trump revoked Executive Order 14030 Climate-Related Financial Risk. EO14030 reinstated EO 13620, which established the Federal Flood Risk Management Standard (FFRMS). HUD and FEMA completed rulemaking to implement FFRMS.

Using Existing Review/Re-evaluation

Mechanism: Review Regulations and Guidance

- Recommend that an existing ER does not need to be reevaluated every 5 years but rather only if certain conditions trigger a reevaluation.

Generally, HUD advises that an RE can rely upon a completed environmental review for 5 years with re-evaluation required when there is a substantial change in the nature, magnitude or extent of the project; there are new circumstances and environmental conditions which may affect the project or have a bearing on the impact; or the recipient proposes the selection of an alternative not in the original finding.

Lead

Mechanism: Review Regulations and Regulatory Waivers

- See if other Agencies' rules are less restrictive and add possible rule change recommendations, including lead testing.

Jacqueline Pata, Co-Chair
Tribal Intergovernmental
Advisory Committee

Jacqueline Pata

Date: April 7, 2025

Bobby Yandell Jr., Co-Chair
Tribal Intergovernmental
Advisory Committee

Bobby L Yandell Jr

Date: 4-7-2025

Previous TIAC Meeting Recommendations

Tribal Intergovernmental Advisory Committee (TIAC) Recommendations

HUD Resources for Indian Country Recommendations

- NAHASDA Funding Levels
  - Recommend NAHASDA as an entitlement program similar to Section 8 inflation factors built in
  - NAHASDA carryover (pipeline) understanding carryover vs. advances Tribes having to carryover funds over a period of time to construct
  - Research LOCCS balance data -
- Tribe eligibility for other HUD program
  - CoC - Tribes are now included as eligibility entity to apply for CoC funds, however the funding level did not increase
  - Green and Resilient Energy Efficiency – The NOFO included Tribes as an eligible entity but the criteria excluded FCAS units.
- Set asides for non-tribal grants

Infrastructure and Development Recommendations

Infrastructure Needs of Tribal Communities

- IHS Letter
- Explore the coordination of reporting on development and infrastructure program/funding requirements i.e. 477 model
- Ensuring technical support for infrastructure development
- Develop a matrix of funding for infrastructure.
- Share Best practices and models with Tribes/TDHE's

Program & Policy Recommendations

IHBG Competitive

- IHBG Competitive - FY2023 Appropriate bill language states:
  $150,000,000 shall be available for competitive grants under the Native American Housing
  3 Block Grants program, as authorized under title I of
  4 NAHASDA – Encourage HUD to engage in consultation with Tribes as to whether this should be a national, regional (i.e. ICDBG/IHBG)or other competition
- Parity in funding increase requests by HUD and the President between Public and Indian Housing.
  - e.g. 2023 President's request for TBRA: 17% increase; NAHASDA: 0%
  - e.g. 2024 President's request for TBRA: 8% increase; NAHASDA: 3%
- IHBG Competitive decisions made in a timely manner.
- Statutorily-required funding estimates for IHBG in 90 days and ONAP regularly beats this timeline.
- IHBG Competitive Announcements for CY 2023 were made 8 months after the application due date.

Procurement:

- Review the procurement requirements clarification of definitions
- The ability to negotiate procurement

Environmental Review:

- Universal acceptance for other HUD programs (i.e.. HUD Healthy Homes) to incorporate ONAP's Environmental Review Process for two purposes:
  - Eliminates duplicative ERRs
  - It's a format Tribes are already familiar and are successfully utilizing.
- Respecting the Tribes designation of the TDHE to enter the environmental review into HEROs
- Review HUDs environmental review regulations and implementation to other departments for consistency and efficiency.

- ***Capacity Building***

On-going Consultations Recommendations:

BABA:

- Waiver for all Tribes, until we get a permanent exemption
- Clarify for definition of *"project"* – Is it a dollar threshold?

PRICE:

- Clarify the definition of manufactured housing? Recommend: Manufactured homes are portable homes completely constructed in a factory and transported to its final destination.
- Include tribal set aside
- Ensure eligibility activities included repair and replacement

ICDBG:

- Remove CBDO requirement New Housing Construction
- Don't rely on BIA to define 25 USC 5304 definition of a Tribal Organization, when Tribes have designated by resolution what a Tribal organization is i.e. Tribally Designated Housing Entity

Housing Counseling:

- TIAC Recommendations were submitted in writing

Homeownership Recommendation

- HUD should be taking the lead to ensure that AI/AN borrowers are not limited to excluded from construction loan products
- HUD should continue to educate and encourage lenders to offer 184 loans
- As HUD is reviewing the appraisal industry they should:
  - Include and recognize energy efficiency in appraisals i.e. solar, energy efficiency building standards

    - Allow for cost base appraisals when comparative models are not relevant
- Ensure Tribes are at the table for discussions of mortgages for the "missing middle income households"
- Consider a "Homeownership" as a theme for the next Housing Summit
    - HUD can helps us reduce barriers to homeownership

Special Needs & Homelessness Recommendations

- CoC -
    - There should be an alternative to States as coordinators, where States and Tribes have impaired relationships.
    - Recommend an overall exemption to accommodate Tribes/TDHE's existing board in lieu of CoC required Board structure.

- Assisted Living Housing & Homelessness –
    - Explore an MOU with HHS similar to the VA MOU to provide medical expertise and resources for the hard to house population

Policy Development & Research Recommendations

- Updating the Housing Needs Assessment
- Affordability gap - Gather data to understand the affordability gap and its impact on housing operations and revenues
- Impact of Climate change on Indian Housing how are we documenting the related costs
- Measuring need for Tribal data
- Tribal Model Building Codes including manufactured housing codes

Streamlining Letter

Tribal Intergovernmental Advisory Committee
U.S. Department of Housing and Urban Development

TIAC Letter to HUD
RE: Streamlining
9-5-2024

The Tribal Intergovernmental Advisory Committee (TIAC) recommends that Tribes and Tribally-Designated Housing Entities (TDHEs) be allowed to report on all HUD grants using the Indian Housing Plan/Annual Performance Report (IHP/APR). This format is well-established and in wide use by all Indian Housing Block Grant (IHBG) recipients. The report can easily be amended to add new sections to allow IHBG recipients to report on all HUD grants in the course of reporting on their IHBG-funded activities.

Tribes and TDHEs are eligible to apply for various HUD grants outside of the Office of Native American Programs (e.g. Healthy Homes, PRICE, CoC, ROSS, etc.). When they receive these awards, they are bound by their respective reporting requirements. This greatly limits the efficacy of IHBG recipients in their pursuit and leveraging of resources, and undermines the Federal trust responsibility and nation-to-nation relationships with Tribal governments invoked in Executive Order 14112 by inducing needless administrative complexity.

Having multiple grant management life cycles related to reporting requirements is burdensome, inefficient, and expensive. It diverts funds from essential project functions (housing, infrastructure, healthcare) and diminishes creativity and innovation. We believe that the grants management lifecycle of HUD programs can be consolidated in a way that ensures and enhances accountability, while also being less costly and burdensome for Tribes and TDHEs and meets the directive of E.O. 14112.

The TIAC hereby requests HUD to engage with tribes in the establishment of a pilot program combining the grants management lifecycle for multiple HUD programs into a single existing grant award and reporting mechanism: the IHP/APR. This pilot aligns with carrying out Sec. 5 of Executive Order 14112, which requires agencies design application and reporting criteria and processes in ways that reduce administrative burdens, including by consolidating and streamlining such criteria and processes within individual agencies.

Sincerely,

TIAC Members

Tribal Intergovernmental Advisory Committee
U.S. Department of Housing and Urban Development

Arch Super
Council Member, Karuk Tribe

Bobby Yandell
Representative, Choctaw Nation of Oklahoma

Bridgett Sorenson
Director, Sault Ste. Marie Tribe of Chippewa Indians

Denise Harvey
Council Member, Confederated Tribes of Grand Ronde

Jacob Snow
Representative, Tunica-Biloxi Tribe of Louisiana

Jacqueline Pata
1st Vice President, Central Council of Tlingit and Haida
Indian Tribes of Alaska

Kim Teehee, Representative, Cherokee Nation

Patricia McDonald
President, Healy Lake Village

Teri Nutter
Council Member, Gulkana Village Council

Tyler Yellow Boy
Council Member, Oglala Sioux Tribe

Tribal Intergovernmental Advisory Committee
U.S. Department of Housing and Urban Development

Victoria Hobbs
Council Representative, Tohono O'odham Nation of Arizona

Victoria C. Hobbs

Rodney Rave
Tribal Legislator, Ho-Chunk Nation of Wisconsin

Rodney Rave

Indian Health Services Letter

9/27/2023

Roselyn Tso, Director
Indian Health Service
5600 Fishers Ln
Rockville, MD 20857

RE: Use of Funds for NAHASDA-assisted Projects

Dear Director Tso;

As you may be aware, HUD has convened the Tribal Intergovernmental Advisory Committee (TIAC) and appointed tribal leaders from around the country to address issues of mutual concern with the goal of improving cooperation and coordination on providing federal housing and other assistance in Indian and Alaska Native communities.

The particular issue we would like to discuss with you is the Indian Health Service policy of not allowing IHS construction dollars to be spent on Native American Housing Assistance and Self Determination Act (NAHASDA) funded projects.

The practice of not providing IHS construction funding began with the 1996 Tri-Agency Agreement approved by the agencies on September 2, 1994, and published in the FEDERAL REGISTER on September 10, 1996, which outlined responsibilities of HUD, IHS and the BIA in the construction of Indian Housing Units. Ironically, this transpired shortly before President Clinton signed NAHASDA into law on October 26, 1996 and was meant to outline the process to be followed when tribes were administering HUD's Indian Housing Program, a precursor to NAHASDA.

The Tri-Agency agreement was designed to outline responsibilities of the three federal agencies in the development of HUD funded housing. At that time, HUD agreed to include funding for water and waste water projects that were awarded to Indian Housing Authorities. This was to align funding so that water and waste water funding was available for each HUD project. (See Section 6.0 DEVELOPMENT OF SANITATION FACILITIES IN THE Tri-Agency agreement). All of that changed with the passage of NAHASDA. The tri-agency agreement ceased to exist due to the fact that HUD no longer built projects.

Somewhere along the way, the Indian Health Service sought support to continue their practice of not funding sanitation facilities from Senate Appropriations language. We are requesting that Indian Health Service returns to their trust responsibility seeking adequate funding to provide sanitation facilities to any new unit built for an eligible tribe or tribal individual regardless of the source of construction funding.

A bill to reauthorize NAHASDA is currently pending in Congress and contains a provision which would remove any restriction from the IHS appropriations bills. It is the hope of the tribal leaders on the TIAC committee that the Indian Health Service will support this new provision and allow Indian or Alaska Native communities to make their own decisions about how to allocate the limited federal funds coming from both HUD and IHS to address their housing and infrastructure needs.

We are available to answer any questions or discuss how our communities are using IHS funds now and what our further infrastructure needs will be.

Sincerely,

The U.S. Department of Housing and Urban Development Tribal Intergovernmental Advisory Committee

Arch Super, Council Member, Karuk Tribe

Arch Super

Bobby Yandell, Representative for Choctaw Nation of Oklahoma

Bridgett Sorenson, Board of Director, Sault Ste. Marie Tribe of Chippewa Indians

Bridgett Sorenson

Denise Harvey, Council Member, Confederated Tribes of Grand Ronde Community of Oregon

Denise Harvey

Glenn Ellis Jr., Council Member, Makah Indian Tribe of the Makah Indian Reservation

Jacob Snow, General Counsil, Tunica-Biloxi Tribe of Louisiana

Jacob Snow

Jacqueline Pata, 1st Vice President, Central Council of Tlingit and Haida Indian Tribes of Alaska

Jacqueline A Pata

Patricia MacDonald, Council President, Healy Lake Village

Shere Wright-Plank, Representative for Rosebud Sioux Tribe of the Rosebud Indian Reservation

Shere Wright-Plank

Terri Nutter, Council Member, Gulkana Village Council

Tyler Yellow Boy, Council Member, Oglala Sioux Tribe

Victoria A Hobbs, Legislative Council Representative, Tohono O'odham Nation of Arizona

Victoria A Hobbs

Kim Teehee, Representative for Cherokee Nation Delegate to Congress

Kim Teehee

<u>TIAC Construction Cost White Paper</u>

Requirements that Attribute to High-Cost Development in HUD Funded Projects
Discussion Paper 11-17-2023

1. Introduction:
Federal funding plays a crucial role in financing construction projects across various sectors, such as infrastructure development, public facilities, and community improvements. However, it is often observed that construction costs escalate when federal funds are involved. This paper aims to shed light on the specific factors contributing to this phenomenon, with a primary focus on regulation restrictions and the delays in timely payment delivery.

2. Regulation Restrictions:
Federal funding for construction projects is accompanied by a range of regulations designed to ensure transparency, accountability, and adherence to various policies. While these regulations serve important purposes, they can inadvertently add complexity and time-consuming processes to construction projects that inadvertently adds to some contractors inflating their bids. A few key regulation-related challenges impacting construction costs include:

2.1. Compliance Burden:
Federal regulations necessitate strict compliance with numerous standards, codes, and guidelines. Contractors and project teams must allocate additional time, resources, and expertise to meet these requirements, leading to increased costs.

2.2. Environmental Impact Assessments:
Environmental regulations often mandate comprehensive assessments and mitigation measures for construction projects. These assessments can significantly prolong the planning and approval phases, adding to project timelines and costs.

2.3. Labor and Wage Regulations:
Federal funding programs may come with specific labor and wage regulations, such as the Davis-Bacon Act. Compliance with these regulations can lead to higher labor costs, as prevailing wages and benefits must be provided to workers.

3. Delayed Payment Delivery:
Another significant challenge associated with federal funding programs is the delay in payment delivery to contractors and suppliers. These delays can arise due to various factors, including bureaucratic processes and extensive documentation requirements. The impact of delayed payments on construction costs includes:

3.1. Cash Flow Constraints:
Contractors heavily rely on consistent cash flow to cover project expenses promptly, such as material procurement and labor wages. Delays in payment disrupt cash flow, leading to increased borrowing costs, penalties, and potential project delays.

3.2. Increased Administrative Efforts:
Contractors are often required to submit detailed documentation and progress reports to receive payments. The administrative burden of complying with these requirements adds additional costs, such as hiring specialized staff or outsourcing services.

3.3. Opportunity Costs:
Delayed payments limit contractors' ability to invest in other projects or allocate resources efficiently. This opportunity cost can result in higher indirect costs and reduced profitability indirectly resulting in higher bid awards.

4. Potential Solutions:
To mitigate the impact of regulation restrictions and delayed payment delivery, several potential solutions can be explored:

4.1. Streamlining Regulatory Processes:
Collaboration between federal agencies, local authorities, and stakeholders can help identify opportunities to streamline regulatory processes without compromising safety or compliance standards. This should also include the ability to negotiate bid prices instead of simply accepting a lower bid and/or allowing Tribes to follow their own procurement guidelines.

4.2. Improved Payment Processing:
Implementing electronic payment systems and standardized reporting frameworks that streamline processes can expedite payment processing, minimize paperwork, and reduce administrative burdens.

4.3. Enhanced Communication and Collaboration:
Establishing clear lines of communication and fostering collaboration between federal agencies, contractors, and suppliers can help identify and resolve payment issues promptly, reducing delays and associated costs.

4.4. Financial Support Mechanisms:
Introducing financial support mechanisms, such as interim funding options or bridge loans, can assist contractors in managing cash flow during payment delays, minimizing the impact on construction costs.

5. Conclusion:
While federal funding is vital for various construction programs, it is essential to recognize the challenges associated with regulation restrictions and delayed payment delivery, which can contribute to higher construction costs. By implementing streamlined processes, improving payment systems, and fostering collaboration, stakeholders can work towards minimizing these challenges and enhancing cost-efficiency in federally funded construction projects.

HUD TIAC BABA Consultation Comments

TRIBAL INTERGOVERNMENTAL ADVISORY COUNCIL
Department of Housing and Urban Development

December 4, 2023

U.S. Department of Housing and Urban Development
Office of Native American Programs

Via Electronic Mail to: consultation@hud.gov

Subject: Comments on the Effect of Implementation of the Build America, Buy America Act on Tribal Housing Entities

To Whom It May Concern:

The HUD Tribal Intergovernmental Advisory Committee (TIAC) thanks the Office of Native American Programs for the opportunity to comment on the implementation of the Build America, Buy America Act (BABA) with respect to programs administered by ONAP on behalf of tribes and tribally designated housing entities, including the Indian Housing Block Grant and Indian Community Development Block Grant. The HUD TIAC was established pursuant to Executive Order 13175 that elucidated the need for "regular and meaningful consultation and collaboration with tribal officials … and to reduce the imposition of unfunded mandates upon Indian tribes." The HUD TIAC is gravely concerned about the imposition of BABA due to its high likelihood to increase costs and delay gravely needed housing for America's most overcrowded people. In short, BABA is an unfunded mandate that the TIAC was established to prevent.

1. Tribal Housing Projects Reserved for Private Residential Use Should Not Be Characterized as Infrastructure Projects.

Nothing in BABA or the final regulations promulgated thereunder defines infrastructure to include tribally owned rental housing projects operated for the benefit of private citizens. 2 CFR 184.4(d) explicitly provides that in determining whether a particular project constitutes "infrastructure," a "Federal awarding agency should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public." In its October 25, 2023, implementation guidance memorandum M-24-02, the Executive Office reaffirmed by way of example that "the purchase, construction or improvement of a private home for personal use, for example would not constitute a public infrastructure project for purposes of BABA," even through "real property" is specifically listed in the definition of infrastructure.

Privately leased residential property is far more similar to a "private home for personal use" than it is to the public facilities specifically delineated in the statute, which include public transportation, water and sewer, and public utility projects. Residential housing is intrinsically a private good, whose benefits are enjoyed specifically due to its private, rather than public nature. That characterization is not lost simply because the private housing may sit within a multifamily building that is itself not a place of public congregation. It is within HUD's authority under BABA to determine that tribally developed and operated projects reserved for private residential use by individual households do not constitute infrastructure under the statute.

2. BABA Implementation for ONAP Programs Should Be Waived in the Public Interest.

BABA implementation should be waived for Tribes and TDHEs participating in ONAP programs due to the overwhelming need for decent, safe, and affordable housing in tribal communities. A history of severe underinvestment in American Indian and Alaska Native communities coupled with unique logistical challenges mean that AIAN populations face some of the worst housing conditions in the country. HUD reported in its 2017 *Housing Needs of American Indians in Tribal Areas* publication that 68,000 new housing units were needed just to address the then-existing overcrowding and physically deficient living conditions in those areas.

The funding flowing to tribal communities to address housing needs has stagnated. IHBG funding has not kept pace with either inflation (losing 25% of purchasing power since 2000) or the total budget of HUD (losing approximately 50% of its proportion of the total HUD budget since 2000).

Many tribal communities throughout the country are situated in remote locations that make housing development time-consuming and expensive. A large percentage of tribes are situated in remote rural locations that do not have a population base to make procurement feasible. For example, many tribes reported during a Tribal Consultation at the HUD National Housing Summitt held November 1 that there were no hardware stores or lumber yards within 3 hours driving distance. This lack of available material presents higher costs due to logistics and the inability to scale material purchases. The result is that tribes and TDHEs are paying higher prices for similar materials to their non-tribal counterparts. And again, the housing needs of American Indians and Alaska Natives are much higher than the population of the US as a whole.

Tribes and TDHEs continue to do what they can with limited resources but face a confluence of difficult conditions even without the additional pressure that would come with BABA implementation. Under these circumstances, the overwhelming public interest in providing critically needed decent, safe, and sanitary homes to these under resourced communities provides ample support for the waiver of BABA requirements for ONAP projects.

The US Commission on Civil Rights report <u>Broken Promises: Continuing Federal Funding Shortfall for Native Americans</u> released in 2018 makes clear that affordable housing is part of the US Government's Trust responsibility to Native Americans. That Trust responsibility goes beyond the social contract theory underpinning many of the aid programs for people living in poverty. The Trust responsibility to Native Americans was assumed by the US Federal Government because Native Americans were warred upon, displaced, disenfranchised, and even had their Tribes' Federal recognition terminated as late as the 1950's. This special responsibility by the Federal Government makes imperative a special consideration of the impact of Federal policy on Native American tribes and people.

3. BABA Implementation for ONAP Programs Should Be Waived Pending Feasibility Study.

On November 21, 2023, HUD published a Federal Register Notice at Docket No. FR-6407-N-02, which delayed the application of BABA requirements for HUD infrastructure projects in Pacific Island territories for 15 months. The Notice acknowledged that given the locations of these economies, which require importation by sea or air, additional time to consider the implications of BABA requirements on recipients in these territories was in the public interest. HUD noted that BABA implementation in the Pacific Island territories could "increase already elevated project time and costs" and that more time is needed to better understand logistical implications and the balance of equities for recipients in these territories. The Department of Energy on August 18, 2023 issued notice of a General Applicability Public Interest Waiver for the Pacific Island Territories with very similar justification. The notice stated "This waiver would provide the time for the agency to collect and analyze evidence to determine if a more targeted waiver of these requirements is in the public interest.[1]

Many tribal communities are similarly situated to the Pacific Island territory recipients, and the rationale for waiver of BABA implementation pending feasibility analysis should apply equally to tribal recipients of ONAP programs.

While tribal recipients will almost surely experience price increases and project delays as a result of BABA, the extent of these impacts is currently unknown. AIAN recipients of ONAP funding are in dire need of additional housing now, and attempting to implement BABA requirements without a full understanding of the potentially devastating effects on the US Government's ability to fulfill its Trust responsibility to provide housing to Native Americans is difficult to comprehend. A months-long delay in implementation of BABA to ensure proper and appropriate administration could prevent a years-long wait for affordable housing for tribal families in need. HUD should waive implementation of BABA for ONAP programs while it undertakes the important work of understanding the full implications of its requirements on tribal communities.

Contractors across Indian Country are in short supply. BABA requirements will place an additional burden on contractors in addition to all other Federal requirements that currently apply. Contractors will evaluate the compliance environment and choose not to engage in working with tribes on Federally funded projects. Those that do continue working with tribes will undoubtedly raise their pricing due to the additional compliance burden from BABA.

Implementing BABA without a full accounting of the disparate impacts would run counter to the opening clause of Executive Order 13175 that states preventing unfunded mandates as a specific goal of the Federal Government.

4. Projects Leveraging Significant Non-Federal Assistance Should be Exempt from BABA Requirements.

Affordable housing developments that leverage LIHTC with HUD funds typically include strict development timelines set by investors and allocating agencies. Project delays engendered by BABA compliance will decrease project equity and make such projects less attractive to investors.

Further, LIHTC and other competitive funding opportunities reward projects with leverage and cost efficiency. A proposed project using 10%-15% Federal funds but subject to an increased total project cost due to BABA compliance requirements would rarely be competitive against projects proposed by private developers driven purely by profit. The outcome will be that LIHTC projects that include Federal financial assistance will be less likely to be awarded.

It is likely that developers of affordable housing would self-select out of Federal Financial Assistance programs to develop affordable housing with LIHTC. That self-selection decreases the leveraging power of LIHTC and Federal Financial Assistance because housing developments require large number of units to develop the economies of scale for efficiency in construction. These concerns are likely shared by Public Housing Agencies and Cities/Counties across the US. What is different for Tribes and TDHEs is their remoteness and low populations compound the negative impacts because Tribes and TDHEs are starting from a deficit relative to PHAs and Cities/Counties. The remoteness and low population of tribal communities make developing any housing cost much more than any other remote rural place in the US.

[1] https://www.energy.gov/sites/default/files/2023-08/DOE-Final-Pacific%20Island%20Territories%20Waiver-%20FINAL%208.18.2023-1.pdf

The HUD TIAC recommends HUD implement a BABA applicability threshold of at least 50% of Federal Financial Assistance to total project cost for an affordable housing project in order to ensure continued competitiveness for leveraged projects, given the public interest in the continued timely development of affordable housing.

5. Proof of Non-Availability Should be Established Through the Procurement Process

With low populations and remote locations, tribes already face procurement costs and time delays above and beyond the average agency charged with meeting the housing needs of Americans. Absent a pre-existing manufacturing base, implementation of BABA requirements will delay project completion times, decreasing the ability of tribes and TDHEs to develop additional affordable housing.

Similarly, burdensome BABA sourcing compliance requirements will likely further erode competition among bidders, particularly when coupled with additional project complexity and sourcing difficulty that makes projects less attractive to bidders in the first instance. Under the current BABA waiver process, the HUD TIAC cannot envision a scenario where a request for waiver could be approved in time for a project to proceed in the intended building season. Given these circumstances, HUD should consider a lack of responsive bidders on infrastructure projects indicative of the unavailability of US made materials, providing the evidence necessary to permit a waiver of BABA compliance requirements. Such a process would establish the developer's attempt to comply with BABA requirements while lessening the significant impact of delays associated with the standard BABA waiver process.

6. HUD should provide administrative clarity on BABA.

Guidance on such a complex law and framework for contracting is sorely needed. Tribes and TDHEs receiving IHBG and ICDBG need guidance from HUD on how BABA will require them to operate. Guidance should include defining what a "project" is that triggers the BABA requirements. Also, HUD should provide guidance on how BABA would affect Indian Preference requirements in procurement and contracting. Finally, some clarity on when BABA would take effect and on whom the burden falls, i.e. at the time of procurement or at the time of delivery of material. That would help clarify the risk and operating requirements for tribes and TDHEs.

Respectfully,

Jacqueline Pata, Co-Chair

Tyler Yellow Boy, Co-Chair

TIAC Housing Counseling Comments

Tribal Intergovernmental Advisory Committee
Department of Housing and Urban Development

August 28, 2023

Us Department of Housing and Urban Development
Office of Housing Counseling
550 122th Street, NW
Washington, DC 20024

Re: Comments on proposed rule for Certification of Tribal Housing

Counselors Submitted via email: consultation@hud.gov

In response to the Dear Tribal Leader Letter dated July 7, 2023, the Tribal Intergovernmental Advisory Committee (TIAC) provides the following comments on the proposed rule for the certification of Tribal Housing Counselors.

The TIAC is comprised of 15 Tribal delegates from across the country and (among other objectives) is intended to enhance government-to-government relationships, communication and mutual cooperation between HUD and Tribes. The members of the committee submit the following comments to HUD Office of Housing Counseling.

Thank you to the Office of Housing Counseling (OHC) for intently listening to Tribes about the potential impacts that Tribal Housing Counseling certification would have on our service delivery. We recognize that OHC has implemented suggestions in the proposed rule and has come to understand some of the barriers that Tribes would encounter without changes being made to the regulations.

As OHC moves forward, we ask the following be considered and/or communicated with Tribal housing programs.

- Provide reassurance, through program guidance, to reiterate that Tribes are exempt from the rule if they do not meet **all** elements that are defined in 24CFR §5.100: Intake; Client budget; Financial and housing affordability analysis; An action plan, except for reverse mortgage counseling; and, Reasonable effort to follow-up with client. The guidance should further reiterate that Tribes are **not required** to participate in housing counseling, if the services that they already provide are not formal housing counseling.
- OHC should adopt the Pathways Home curriculum as an optional tool for delivering housing counseling on Tribal lands or to Alaska Native and Native American families.
- The TIAC supports OHC's proposal to engage with subject matter experts when developing the Tribal Housing Counselor Certification exam. There should be an advisory committee that is comprised of various Tribes and Tribally Designated Housing Entities (THDEs) that are providing affordable housing services to Alaska Native and Native American families.

- OHC and HUD leadership should continue to advocate that Tribes and TDHEs be eligible entities to apply for housing counseling funding. If required to have official housing counseling programs, it is an unfunded mandate; Tribes should not be required to utilized their Indian Housing Block Grant to provide housing counseling services.

Although the actions taken by OHC have improved the process and access to Housing Counseling for Tribal Communities, additional barriers should be addressed to ensure that Tribal Housing Programs would be successful if they choose to provide housing counseling. For example, 24CFR §214.303(b): Workload; Tribes would be required to provide housing counseling to at least 30 clients in a 12-month period. For smaller tribes, this would be an unreasonable expectation.

Finally, as OHC continues to engage with Tribes, we cannot stress enough that Tribal Sovereignty and Self-Determination continues to be honored as a basis for which we engage and serve our Alaska Native and Native American families and communities.

Thank you again for the opportunity to provide comments and we look forward to continued engagement with HUD OHC as the proposed rule is finalized.

Respectfully,

Jacqueline Pata

Jacqueline Pata,
Co-Chair

Tyler Yellow Boy,
Co-Chair

Members: Glenn Ellis, Jr., Tina Glory-Jordan, Teri Nutter, Bridgett Sorenson, Bobby Yandell, Victoria Hobbs, Darren Brinegar, Denise Harvey, Jordan Rahn, Marshall Pierite, Lee Spoonhunter, & Arch Super.

TIAC ICDBG Program Comments

January 2024

HUD Office of Native American Programs
consultation@hud.gov

RE: ICDBG Regulations

To Whom It May Concern:

Pursuant to the Department of Housing and Urban Development Office of Native American Program's (ONAP) request for comments regarding Indian Community Development Block Grant (ICDBG) regulations, below are comments from the Tribal Intergovernmental Advisory Committee (TIAC).

TIAC is pleased that HUD ONAP is undertaking rulemaking to update the ICDBG regulations. ICDBG has been a necessary supplemental source of funding for Indian and Alaska Native communities. The Committee strongly believes that Tribal Consultation should be a necessary component of any rulemaking or policy changes. Tribal leaders should always be at the table when decisions about federal tribal programs are being made. We also feel it is important to receive input from tribal housing practitioners since they possess practical knowledge about housing programs are managed.

The comments below relate directly to the specific questions posed by HUD ONAP and in some cases, extend to the program as a whole.

During the drafting of our comments, the White House issued Executive Order 14112, *Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination.* These comments may also be considered as initial recommendations for ways in which HUD ONAP can and should facilitate the goals and policies outlined in the Order

- **Eligible and ineligible activities (24 CFR 1003.201)**
  - TIAC urges ONAP to remove any unnecessary program regulations or requirements that do not allow Grantees to achieve the objectives of the program or support tribal self-determination.
    - TIAC strongly recommends that the CBDO requirement be removed for New Housing Construction. New construction should be an eligible activity in order to support Tribes and TDHEs in their efforts to address overall housing needs.

        - In some cases it may be more cost efficient for a Grantee to purchase equipment compared to leasing. TIAC recommends that equipment purchases be an eligible activity when a cost analysis evidences cost savings.
    - In order to reduce administrative burden, TIAC also recommends that HUD ONAP streamline the amount of documentation to be submitted or steps to be taken when an applicant is engaging in certain eligible activities, such as economic development.

- **Area ONAP allocations of ICDBG funds (24 CFR 1003.101)**
    - We support allocating the ICDBG funding on a regional basis and the current practice of area ONAP offices conducting the applicant scoring by region. Regional ONAP staff have a better understanding of the capacity of the TDHEs within their area and it has been our experience that this knowledge is beneficial to TDHEs and the program overall.
    - It is our understanding that there have been prior occasions when HUD ONAP has shifted ICDBG funding from one region to another due to lack of applications or lack of applications that have reached the minimum points threshold. We believe it would be worthwhile to take a closer look at any prior shifting of ICDBG funds between regions in order 1) to determine if there are any regions that consistently don't utilize the full allocation, and 2) to determine where additional administrative capacity building could be helpful. TIAC requests that HUD ONAP collect this information for future review and discussion by the Committee. However, despite our interest in learning more about this practice, we continue to support the regional allocation of funding.
    - The current funding ceiling per award is appropriate, but the ceiling should regularly be reassessed to adapt to current and ongoing development and cost challenges.
    - Regarding the overall ICDBG funding allocation, TIAC is mindful that the ICDBG budget is fixed through a set aside within the overall CDBG budget. Like all other funding sources, this pot of funding is oversubscribed. One of TIAC's long term objectives is to raise awareness regarding historical funding deficiencies for tribal housing programs. As a result, the Committee will be taking a closer look at whether there may be any opportunities for the ICDBG budget to be increased.

- **Compliance with the primary objective (24 CFR 1003.208)**
    - Pursuant to 24 CFR 1003.208, the primary objective of the ICDBG program is to provide decent housing, a suitable living environment and expanding economic opportunities for principally persons of low and moderate income. TIAC supports the primary objective, but the Committee will continue to advocate for the easing of unnecessary and burdensome administrative requirements within the program in order to support grantees to achieve the primary objectives.

- **Rating factors included in the Notice of Funding Opportunity (24 CFR 1003.303)**

- In the newest NOFO for the IHBG Competitive Program, Rating Factor 4, Leveraging, has been removed as a rating factor. We strongly recommend that leveraging also be removed as a rating factor from the ICDBG NOFO.

- TIAC strongly encourages HUD ONAP to reassess the current size and complexity of the ICDBG Notice of Funding Opportunity. In order to complete an application for any program with an extensive NOFO, tribes and TDHEs are often required to commit extensive amounts of time and excessive amounts of money, including hiring outside grant writers. We challenge HUD ONAP to reconsider this approach. Reducing the size and complexity of the NOFO would also comport with Executive Order 14112, Section 5 (a)(iii), which prompts federal agencies to: "design application and reporting criteria and processes in ways that reduce administrative burdens, including by consolidating and streamlining such criteria and processes within individual agencies."

- During the in-person consultation at the HUD Housing Summit on November 8, 2023, there was a spirited discussion about other ways HUD ONAP might assess an applicant's capacity. We recommend that HUD ONAP investigate other possible methods of determining applicant capacity.

    - New methods to consider might include pre-qualification of basic threshold factors as a first step or round in the application process, or significant revision of the capacity section. (As an example, many national philanthropic organizations often include a pre-qualification round in their application processes. This is often a two-step process where applicants must meet specific pre-qualification criteria before moving on to submit a full application. This process could save applicants time and money).

    - If HUD ONAP were eventually to adopt a new process for determining capacity, any new process should not create additional delays in the processing of applications or the deployment of funds and should not create excessive administrative burden.

    - Many TDHEs have noted that responses to the capacity factors in the NOFO often use up many pages within an application that might be better used on specifics about a project

- Under Subfactor 1.1, Managerial and Technical Staff, HUD ONAP should defer to the discretion of Tribes and TDHEs regarding the staff or team members assigned to a project. Applicants should not be penalized with fewer points because of newer staff or board members.

- Subfactor 1.4, Procurement and Contract Management, should be removed from the NOFO as it has been removed from the recently released IHBG Competitive Grant NOFO.

- Subfactor 1.5. Disbursements, scores the maximum points for having no more than 35% of the grant in LOCCS. This scoring should be adjusted to correspond to the progress compared with the performance period and implementation schedule submitted with the application.

- Subfactor 2.2(c), Project Benefit, scores a maximum of 10 points based on the Needs Table as calculated by HUD. The second tier of scoring is 5 points. The range of dollars in the second tier of scoring still represents a need in the community and should score more than 5 points. TIAC recommends the second tier receive 8 points and the third tier receive 5 points.
- Subfactor 2.3, Connection to Tribal Youth, scores a maximum of 4 points. Youth are not mentioned in the primary objective of the program. TIAC recommends this rating factor be eliminated or at a minimum should be included as preference points with a maximum of 2. Youth will indirectly benefit from all eligible activities.
- Subfactor 2.4, New and Unfunded Applicants, scores either 7 or 0 points and is rated over a 5 year period. This rating factor is in the Needs category. Receipt a prior ICDBG grant does not necessarily eliminate the need in a community. The rating period of 5 years is excessive, particularly for communities that receive maximum points in subfactor 2.2. TIAC recommends that HUD ONAP return to the previous scoring on this factor of 5 or 0, or add another tier between the current 7 and 0 range.
- Subfactor 3.4(e), New Land Acquisition to Support Housing, scores 5 points. TIAC recommends the number of years from land purchase to completion of housing be changed to 3. Depending on the land purchased, site development could take up to two years.

- **ICDBG Imminent Threat Grants (24 CFR 1003 subpart E)**
    - TIAC is in support of the ICDBG IT grant program and the Committee appreciates that it exists to address imminent threats. We have no concerns about the grants being awarded on a first-come-first-served basis.
    - Currently the timeframe for reviewing and funding ICDBG Imminent Threat applications is too long and does not comport with the intended purpose of the grant to address imminent disaster. We believe that if area ONAP offices were to process IT grant applications it would greatly speed up the process.
    - Consider reallocating remaining annual appropriation to Tribes who received IT grants within that year to see if they could use additional funds. In some cases the initial IT grant may not have covered all that was needed to address an imminent threat.
    - The current ICDBG Imminent Threat grant ceiling does not meet the current level needed to recover from a disaster. Without an increased appropriation to the ICDBG IT, the limited amount of funding could potentially be depleted with one disaster. If the overall ICDBG-IT budget was increased, (*not at the expense of the IHBG*) TIAC would support increasing the grant ceiling by 25%. Although 25%

does not begin to make up for the extreme increase in construction costs, it would provide more relief to Tribes that are facing a disaster.

- HUD ONAP should allow TDHEs to apply for ICDBG IT on behalf of Tribes. A disaster in a small community means that all hands are on deck to ensure the needs of communities are taken care of. Paperwork to recover from a disaster is the last thing on the minds of a community if their families are experiencing loss of housing and infrastructure. Additionally, vital infrastructure such as the internet may be down for days at a time following a disaster.
  - Many TDHE's are given the authority, through Tribal resolution, to administer IHBG funding. TIAC requests that this designation be carried over to ICDBG IT to allow communities to focus on disaster response, not paperwork. Having the funding go directly to the TDHE will allow the immediate deployment of funds and services into the communities attempting to recover from a disaster.

- **Reporting requirements (24 CFR 1003.506)**
  - TIAC encourages HUD ONAP to make the reporting requirements as simple and streamlined as possible.
  - TIAC also recommends that HUD ONAP consider consolidating ICDBG reporting with APR reporting to help lessen the administrative burden that exists due to multiple reporting requirements for each separate program.
- **Other comments regarding ICDBG**
  - TIAC recommends that HUD ONAP implement elements from the NAHASDA program whenever the program is not restricted by statute, especially when a practice is the result of past negotiations with Tribes. Some examples include:
    - Adopting area distribution factors for ICDBG using the IHBG formula, which was negotiated with Tribes across the country.
    - The IDCBG program should mirror NAHASDA and defer to tribal self-determination regarding exemptions related to assistance for eligible families (as in 24 CFR §1000.104) and essential families and non-low income families (as in 24 CFR §1000.110).
    - Using the definition of "Tribe" as it is established in NAHASDA.
  - Give area ONAP offices more decision making authority. TIAC recognizes that local area ONAP offices regularly demonstrate the capacity and expertise to determine which applications should be funded.
  - We also strongly recommend that HUD speed up the deployment of funds once the application process is complete and funds are awarded. In the current environment, delays of any kind can have a costly impact on projects.

- TIAC recommends that HUD allow Tribally Designated Housing Authorities to be eligible applicants. Coordinating with remote Tribes to secure the required documents and submit the application can be challenging for some TDHEs.

We appreciate this opportunity to provide input on forthcoming rulemaking. We would be happy to further discuss our comments and to share tribal and TDHE experiences with the ICDBG program. The Committee is also greatly interested in how HUD ONAP will be implementing Executive Order 14112, *Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination.* Please let us know if we can answer any other questions or provide additional detail on the above comments.

Technical Assistance Improvements

Tribal Intergovernmental Advisory Committee

U.S. Dept. of Housing and Urban Development

Recommendations to Improve ONAP Training and Technical Assistance

Summary

This memo responds to HUD's request for more information about concerns raised at the Tribal Intergovernmental Advisory Committee (TIAC) related to Training and Technical Assistance (TA). It explains steps HUD could take to address issues related to:

- Greater tribal self-determination in the use of TA funds
- Screening and qualifications of TA providers and subcontractors
- Venue contract negotiations and refreshments for on-site trainings
- Participant surveys and feedback

1. Self-Determination and Flexibility in Program Design and Reporting

Concern: TIAC emphasized the need for Tribal voices in evaluating TA and suggested HUD reporting requirements could be more flexible.

Recommendations:

- Consider **reshaping TA to reflect the self-determination principle** of the Indian Housing Block Grant (IHBG) program. This would give Tribes more flexibility to decide how TA funds are used. Potential ideas include, but are not limited to:
    - Building online communities of practice moderated by qualified experts
    - Supporting peer learning cohorts (e.g., leadership academies)
    - Developing learning management systems
    - Hosting regular "office hours" between scheduled seminars
    - Other approaches that strengthen Tribal capacity through flexible collaboration and knowledge sharing
- Support adoption of **alternative survey and reporting format(s)** that better reflect Tribal priorities while meeting HUD requirements.
- Continue engagement between ONAP TA staff and TIAC to ensure alignment between HUD expectations and Tribal needs.

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2. Screening Qualified Trainers

Concern: TIAC noted the need for stronger vetting of subcontractors.

Recommendations:

- Require **Statements of Qualifications (SOQs)** and/or **Company Capability Statements** for all subcontractors in future RFPs.
- Update subcontractor approval process to require:
    - SOQs
    - Proof of insurance
    - Certification of non-debarment
- Actively recruit subject matter experts leaving Tribal housing roles to capture their practical knowledge and connect them with providers.

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3. Use of T&TA for Marketing

Concern: TIAC raised concerns that some training deliverables looked like marketing or product promotion instead of meeting Tribal needs.

Recommendations:

- Require a **Marketing & Promotion Restriction Disclaimer** in all TA Provider agreements:
  Sample language: *"Consultants are prohibited from advertising, promoting, or marketing any particular organization, services, or products during any training and technical assistance sessions under this agreement."*
- Require addition of this disclaimer to all future RFPs.
- Brief new TTA providers on these requirements during onboarding.

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4. Selection of Venues & Refreshments

Concern: Standard venue contracts (usually hotels) often contain broad indemnity (hold harmless) and cancellation provisions that conflict with federal rules, effectively limiting options for on-site trainings to less desirable venues.

Concern: Federal guidance has disallowed inclusion of light refreshments, including coffee, in training workplan budgets, degrading on-site training experiences.

Recommendations:

- Conduct high-level legal review of problematic provisions in contracts for venues identified as desirable by providers and advise on strategies to overcome these barriers.
- Leverage federal contracting power to increase provider access to desirable venues.
- Issue clear guidance allowing purchase of refreshments for on-site training participants.