



MEMORANDUM

April 18, 2025

TO: TRIBAL HOUSING CLIENTS

FROM: Ed Clay Goodman
HOBBS, STRAUS, DEAN & WALKER, LLP

RE: *Funding Freeze Litigation Updates*

This memorandum reports on litigation concerning the freezing of federal funds. First, we cover a court order in the States case¹ in the United States District Court for the District of Rhode of Island (D.R.I.) denying the federal government's motion for reconsideration of the court's FEMA enforcement order, which we discussed in our most recent memorandum on the funding freeze issue. Then, we provide updates on a couple of preliminary injunction orders recently issued in other cases concerning the freezing of Inflation Reduction Act (IRA) and Infrastructure Investment and Jobs Act (IIJA) funding.

States Case Update

As we discussed in our previous memorandum, after determining that FEMA's recently-implemented manual review of requests for disbursement under open grant awards violates the preliminary injunction (PI) order in effect in the States case, the District Court issued an order enforcing the PI with regard to FEMA funds that have effectively been frozen pending manual review. The government then sought reconsideration, or in the alternative a stay, of that FEMA enforcement order based on the United States Supreme Court's recent decision in another case, *Department of Education v. California*. The government contended that *Department of Education* is factually analogous to the situation before the District Court in the States case and, therefore, that the reasoning the Supreme Court applied in *Department of Education* to find that the district court in that case likely did not have jurisdiction to enter a preliminary injunction against the government applies equally in the States case.

On April 14, the District Court issued an order denying the government's request for reconsideration, or for a stay, of the FEMA enforcement order.² The District Court found *Department of Education* inapposite to the situation before it. Specifically, it noted that, while the Supreme Court in *Department of Education* "highlighted that the" Administrative Procedure Act's (APA) "sovereign immunity waiver does not apply to claims seeking money damages" or "extend to orders to enforce a contractual obligation to pay money," it also reaffirmed its precedent indicating that a district court's jurisdiction

¹ *New York v. Trump*, No. 1:25-cv-00039 (D.R.I. Jan. 28, 2025).

² Order, *New York v. Trump*, No. 1:25-cv-00039 (D.R.I. Apr. 14, 2025), ECF No. 182.

is not barred by the possibility that setting aside an agency's action may result in the disbursement of funds," citing longstanding Supreme Court precedent from the case *Bowen v. Massachusetts*, 487 U.S. 879 (1988).³ While the First Circuit Court of Appeals in *Department of Education* had "determined that the terms and conditions of each individual grant award were at issue," in contrast, the District Court in the States case highlighted that, there, "the terms and conditions of each individual grant that the States receive from the Agency Defendants *are not at issue*."⁴ Rather, the District Court emphasized, the States case "deals with the Agency Defendants' implementation of a broad, categorical freeze on obligated funds *pending* determinations on whether it is lawful to end disbursements of such funds."⁵ And that categorical funding freeze "was not based on individualized assessments of any particular grant terms and conditions or agreements between the Agency Defendants and the States; it was based on" the OMB memo calling for such a freeze "and various Executive Orders."⁶ Therefore, the District Court found, its "orders addressing the categorical freeze were *not* enforcing a contractual obligation to pay money" like the PI order at issue in *Department of Education* was.⁷

The District Court went on to explain that it is "particularly true" in the case of its FEMA enforcement order, which neither required the District Court to "review and analyze the contractual obligations or any provision of the agreements between FEMA and the States" because this "matter is a claim about process, not damages," and, ultimately, the "action the [District] Court enjoined was the implementation of that categorical freeze—*not* action that breached any specific contract-like agreements."⁸

Thus, the District Court determined that the Supreme Court's decision in the *Bowen* case, rather than its recent decision in *Department of Education*, controlled. And what *Bowen* stands for, in the District Court's view, "is that, even if a court's enforcement order can be construed in part as [an order] for the payment of money by the Federal Government to the State, such payments are not 'money damages,'" as precluded under the APA.⁹ In the States case, the District Court's PI order and subsequent FEMA enforcement order "do not provide monetary relief that is a *substitute* for the harm the States experience from the categorical funding freeze," but rather they "provide *specific relief*" to undo the Agency Defendants' actions effectuating that categorical freeze, a "mere by-product" of which is the disbursement of funds to the Plaintiff States.¹⁰

The District Court denied the motion for reconsideration, and both the PI order and subsequent FEMA enforcement order remain in effect in the States case at this time.

³ *Id.* at 5 (internal quotations omitted).

⁴ *Id.* at 6.

⁵ *Id.* (quotations omitted).

⁶ *Id.*

⁷ *Id.* at 7.

⁸ *Id.*

⁹ *Id.* at 8 (quoting *Bowen*, 487 U.S. at 910).

¹⁰ *Id.* (quotation omitted).

IRA/IIJA Cases

*1. Climate United Fund et al. v. Citibank NA et al.*¹¹

Throughout March 2025, Climate United Fund, Coalition for Green Capital, Power Forward Communities, Inc., California Infrastructure and Economic Development Bank, Efficiency Maine Trust, Illinois Finance Authority, Minnesota Climate Innovation Finance Authority, Justice Climate Fund, and Inclusiv, Inc. (Plaintiffs) filed several separate complaints against Citibank, N.A., the Environmental Protection Agency (EPA), the Administrator of the EPA, Lee Zeldin, and the Acting Deputy Administrator of the EPA, W.C. McIntosh (Defendants), in the United States District Court for the District of Columbia alleging Defendants violated several federal statutes, the United States Constitution, and the APA by freezing billions of dollars in grants awarded to Plaintiffs under the IRA and IIJA. Due to the common questions of fact and law, Plaintiffs' cases against Defendants were consolidated into one case.

Citibank holds a \$20 billion pool that Congress appropriated for climate change projects. Plaintiffs were awarded at least \$14 billion of this pool in EPA grants under the National Clean Investment Fund, which is part of the Greenhouse Gas Reduction Fund established by Congress in the IRA. Plaintiffs argued that Citibank froze their funds in February 2025 after the federal government recommended it do so, and they have not been able to access those funds ever since. Plaintiffs submitted a motion for a temporary restraining order (TRO) to unfreeze their IRA/IIJA funds. On March 18, 2025, the District Court partially granted Plaintiffs' TRO motion. Plaintiffs then submitted a motion for a PI. On April 15, 2025, the District Court issued an order granting Plaintiffs' PI motion. It published a memorandum opinion to accompany that order the following day.

The District Court determined Plaintiffs were likely to succeed on the merits of their APA claims against the federal Defendants because the EPA acted arbitrarily and capriciously when it failed to explain its reasoning and acted contrary to its regulations in suspending and terminating Plaintiffs' grants. The Court also determined Plaintiffs were likely to succeed on the merits of their constitutional claims against the federal Defendants because the EPA lacks the authority to unilaterally dismantle a program established by Congress.

The Court determined Plaintiffs were likely to succeed on the merits of their claims against Citibank, as well, because Citibank was only authorized under the Federal Arbitration Act to freeze assets in accordance with Account Control Agreements and in response to lawful instructions or directions from Treasury; neither condition was met in this case, according to the Court.

¹¹ *Climate United Fund v. Citibank NA*, No. 1:25-cv-00698 (D.D.C. 2025).

The Court ordered that:

- EPA, Lee Zeldin, W.C. McIntosh (EPA Defendants), and others working with them are enjoined from effectuating EPA's March 11, 2025 "Notice of Termination."
- EPA Defendants and others working with them are enjoined from unlawfully suspending or terminating Plaintiffs' grant awards or limiting access to funds in accounts established in connection with Plaintiffs' grants, except as permitted by the applicable Account Control Agreement, the grant award, relevant regulations, and applicable law.
- EPA Defendants and others working with them, including officials at the Department of the Treasury, are enjoined from directly or indirectly impeding Citibank or causing Citibank to deny, obstruct, delay, or otherwise limit access to funds in accounts established in connection with Plaintiffs' grants, except as permitted by the applicable Account Control Agreement, the grant award, relevant regulations, and applicable law.
- Citibank is enjoined from transferring or otherwise moving funds out of accounts established in connection with Plaintiffs' grants, except as permitted by the applicable Account Control Agreement, the grant award, relevant regulations, and applicable law.
- Citibank must disburse any funds properly incurred before the mid-February suspension of Plaintiffs' funds.

The scope of these orders appears to be limited to the Plaintiffs in this case.

On April 16, 2025, Defendants filed an emergency motion to stay the District Court's PI order pending appeal in the U.S. Court of Appeals for the D.C. Circuit. On April 16, 2025, the D.C. Circuit administratively stayed, in part, the District Court's April 15, 2025 order granting a preliminary injunction. The D.C. Circuit stayed the part of the District Court's order that (1) enables or requires Citibank to release, disburse, transfer, otherwise move, or allow access to funds, and (2) requires Defendants to file a status report with the District Court. The D.C. Circuit also ordered that no party take any direct or indirect action with regard to the disputed contracts, grants, awards, or funds. The D.C. Circuit issued another order after the District Court's memorandum opinion was published on April 16, 2025 allowing Defendants to file an amended stay motion by April 19, 2025 at 5PM to address the District Court's opinion. Plaintiffs' response is due by April 22, 2025, and Defendants' reply is due by April 23, 2025.

2. *Woonasquatucket River Watershed Council et al. v. Dep’t of Agriculture et al.*¹²

On March 13, 2025, the Woonasquatucket River Watershed Council, the Eastern Rhode Island Conservation District, the Green Infrastructure Center, and the National Council of Nonprofits (Plaintiffs) filed a complaint against the Department of Agriculture (USDA), the Secretary of the USDA, Brooke Rollins, the Department of Energy (DOE), the Secretary of the DOE, Chris Wright, the Department of the Interior (DOI), the Secretary of the DOI, Doug Burgum, the EPA, the Administrator of the EPA, Lee Zeldin, the Department of Housing and Urban Development (HUD), the Secretary of HUD, Scott Turner, the Office of Management and Budget (OMB), the OMB Director, Russell Vought, and the Director of the National Economic Council, Kevin Hassett, in the D.R.I. alleging Defendants violated the APA by freezing millions of dollars in grants awarded to Plaintiffs under the IRA and IJA. Plaintiffs filed a PI motion. On April 15, 2025, the District Court granted Plaintiffs’ PI motion and published its memorandum opinion. The Court stated Defendants did not “provide a rational reason that the need to ‘safeguard valuable taxpayer resources’ justifies a sweeping pause of already-awarded IJA/IRA funding with such short notice.” It also wrote that Defendants could not rely on President Trump’s Executive Order, *Unleashing American Energy*, to justify their unilateral, non-individualized funding freezes. The Court clarified that “[a]gencies do not have unlimited authority to further a president’s agenda, nor do they have unfettered power to hamstring in perpetuity two statutes passed by Congress during the previous administration.”

The Court determined Plaintiffs were likely to succeed on the merits of their claim that the funding freeze was arbitrary and capricious because it was not reasonably explained by Defendants and Defendants ignored Plaintiffs’ significant reliance interests. The Court also determined Plaintiffs were likely to succeed on the merits of their claim that the funding freeze was in excess of statutory jurisdiction because there is no statutory hook for freezing all available IJA and IRA funding in an across-the-board manner based solely on its origins in the IJA and IRA. The Court says Plaintiffs’ claim is even stronger against the OMB and NEC Director Hassett because the OMB’s organic statute grants the agency only oversight and supervisory authority. The Court did not make any determinations as to whether Plaintiffs would succeed on the merits of their claim that the funding freeze was contrary to law, specifically, contrary to the IJA and IRA, because Plaintiffs already showed a likelihood of success on their other two claims.

Importantly, when outlining the scope of its opinion, the Court stated “[a]fter finding that the Government’s sweeping actions were likely unlawful, the Court cannot see why similarly situated nonparties should remain subject to them.” It concluded by determining that “it would be anathema to reasonable jurisprudence that only the named Nonprofits should be protected from the irreparable harms of the likely unlawful agency

¹² *Woonasquatucket River Watershed Council v. U.S. Dep’t of Agriculture*, No. 1:25-cv-00097 (D.R.I. 2025).

actions.” Therefore, the Court issued a “nationwide injunction” based on Plaintiffs’ likelihood of success on the merits of its APA claims.

In its memorandum opinion, the Court ordered that:

- DOE, EPA, HUD, DOI, and USDA are enjoined from freezing, halting, or pausing on a non-individualized basis the processing and payment of funding that was appropriated under the IRA or IJA and has already been awarded.
- DOE, EPA, HUD, DOI, and USDA must take immediate steps to resume the processing, disbursement, and payment of already-awarded funding appropriated under the IRA and IJA, and must release awarded funds previously withheld or rendered inaccessible.
- OMB and NEC Director Hassett must provide written notice of this PI to all agencies to which Memorandum M-25-11 was addressed. The notice must instruct those agencies that they may not take steps to implement, give effect to, or reinstate under a different name the unilateral, non-individualized directives in Memorandum M-25-11 with respect to the disbursement of all open awards under the IRA or IJA. The notice must also instruct those agencies to continue releasing any disbursements on open awards that were paused due to or in reliance on Memorandum M-25-11.
- DOE, EPA, HUD, DOI, and USDA must provide written notice of this PI to all grantees who have been awarded funds under the IRA or IJA.
- All Defendants are enjoined from implementing, giving effect to, or reinstating under a different name the directive in Memorandum M-25-11 to unilaterally freeze awarded funding appropriated under the IRA or the IJA.

As stated, the scope of these orders extends to *all grantees who have been awarded funds under the IRA or IJA*. This PI opinion has not yet been appealed, but Federal Defendants in other ongoing funding freeze litigation have appealed similar orders (*see the Climate United Fund* appeal described above). With this, ***we recommend drawing down as many IJA/IRA funds as possible, if and when they become available.***

Conclusion

If you have questions or would like additional information about anything discussed above, please do not hesitate to contact me at egoodman@hobbsstrauss.com or by phone at (503) 242-1745.

POWERS

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ATTORNEYS AT LAW

Overview of Current Legislative Landscape: The 119th Congress and Trump 2.0

By Paul Moorehead

National American Indian Housing Council
Legislative Conference

April 7, 2025

Nine Indian Tribal Bills Enacted in 2023-2024: Will Past be Prologue?

- 1) Pala Band of Mission Indians Land Transfer Act of 2023
- 2) Grant of a Federal charter to the National American Indian Veterans, Inc.
 - Included in National Defense Authorization Act of 2024
- 3) Grand Ronde Reservation Act Amendment of 2023
- 4) To amend the Siletz Reservation Act to address the hunting, fishing, trapping, and animal gathering rights of the Confederated Tribes of Siletz Indians, and for other purposes
- 5) Puyallup Tribe of Indians Land Into Trust Confirmation Act of 2023
- 6) Winnebago Land Transfer Act of 2023
- 7) Native American Child Protection Act
- 8) Jamul Indian Village Land Transfer Act
- 9) NACIE Improvement Act

Start of the New Congress and Administration

- We are in the 1st Session of the 119th Congress
- Republicans control the House of Representatives with 220-215 majority
 - Smallest House majority since 1931
- Republicans control the Senate 53-47
- President Trump sworn in as 47th President of the United States on January 20, 2025
 - Won popular vote, electoral vote, all seven battleground states
 - 89 percent of U.S. counties shifted right in 2024 elections

Outlook

- An explosion of Executive Orders (EOs) and memoranda during first weeks in office
- FY2025 Appropriations concluded two weeks ago
FY2026 Appropriations in motion
- Ten-year Budget Reconciliation now being developed: House and Senate passed very different Resolutions: look for border, energy production, and tax cuts



Trump Executive Orders

- Trump issued a broad array of EOs ranging from transgender and DEI issues to energy production
- “Hiring Freeze”: exemptions allowed “where those exemptions are otherwise necessary” and where freeze would “conflict with applicable law”
 - <https://www.whitehouse.gov/presidential-actions/2025/01/hiring-freeze/>
- “Return to In-Person Work”
 - <https://www.whitehouse.gov/presidential-actions/2025/01/return-to-in-person-work/>
- “Regulatory Freeze Pending Review”
 - <https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/>

More Executive Orders

- “Initial Rescissions of Harmful Executive Orders and Actions”: Revokes 68 EOs and 20 Presidential Memorandums on various issues
 - Focused on Covid-19 pandemic, use of DEI, climate and immigration policies
 - <https://www.whitehouse.gov/presidential-actions/2025/01/initial-rescissions-of-harmful-executive-orders-and-actions/>
- “Unleashing American Energy”: Directs federal agencies to immediately pause disbursement of funds that Congress appropriated under the Inflation Reduction Act Bipartisan Infrastructure Law
 - Acting Director of OMB subsequently issued a memorandum that clarified that this freeze in disbursement applies only to those “appropriations for objectives that contravene the policies established in section 2” of the Executive Order, which are generally programs supportive of Biden’s “Green New Deal.”
 - <https://www.whitehouse.gov/presidential-actions/2025/01/initial-rescissions-of-harmful-executive-orders-and-actions/>
 - <https://www.whitehouse.gov/briefings-statements/2025/01/omb-memo-m-25-11/>

Office of Management and Budget

- “Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs” M-25-13
 - Requires Federal agencies to identify and review all Federal financial assistance programs and supporting activities
 - Pause on all activities associated with open notice of funding opportunities, such as conducting merit review panels
 - May grant exceptions
- OMB Q&A Regarding Memorandum M-25-13
 - <https://www.whitehouse.gov/fact-sheets/2025/01/omb-q-a-regarding-memorandum-m-25-13/>

Office of Management and Budget, Cont'd

- “Rescission of M-25-13”
 - “OMB Memorandum M-25-13 is rescinded. If you have questions about implementing the President’s Executive Orders, please contact your agency General Counsel.”




THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 29, 2025

M-25-14

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Matthew J. Vaeth, Acting Director, Office of Management and Budget 

SUBJECT: Rescission of M-25-13

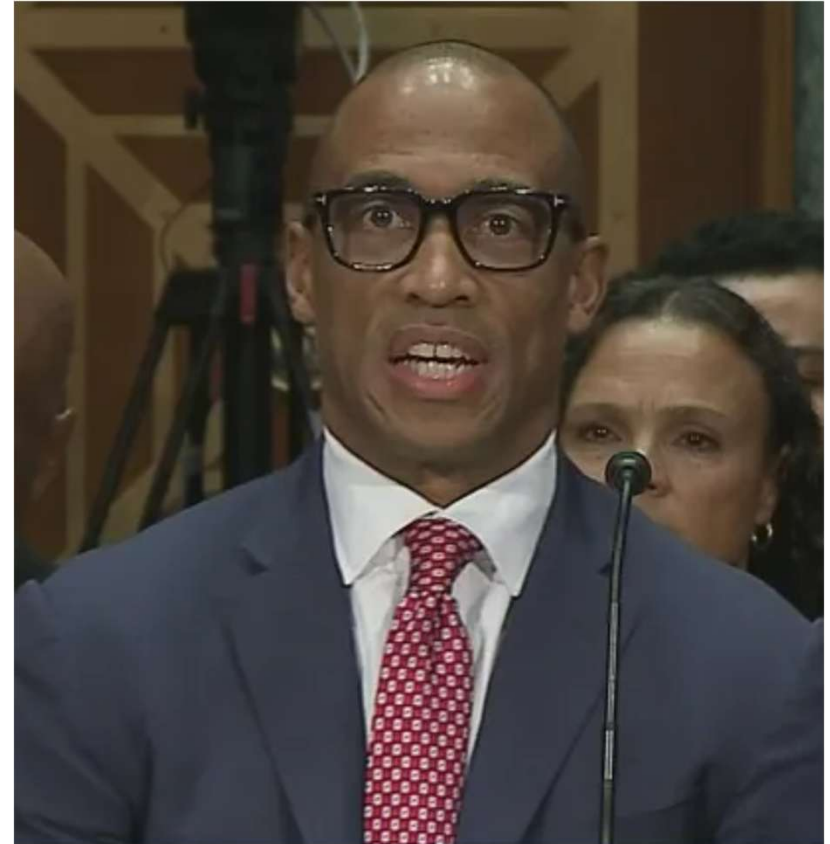
OMB Memorandum M-25-13 is rescinded. If you have questions about implementing the President’s Executive Orders, please contact your agency General Counsel.

Q. Why Budget Reconciliation? A. The Filibuster

- To overcome a filibuster in the Senate requires 60 votes for legislation; Budget Reconciliation only requires 51 votes
- What is reconciliation?
 - Congressional Budget Act of 1974 allows for expedited consideration of certain tax, spending, and debt limit legislation through a process referred to as “reconciliation”
 - Democrats used reconciliation to pass the CARES Act, American Rescue Plan Act, and Inflation Reduction Act
 - Republicans used reconciliation to pass the Tax Cuts and Jobs Act
 - Only used when one party controls the White House and both chambers of Congress
- Congress working on reconciliation bill to extend Tax Cuts and Jobs Act, boost domestic energy production, secure the southern border and other GOP priorities

Secretary Scott Turner at HUD

- Scott Turner was confirmed to be Secretary of HUD on February 5, 2025
- Former NFL football player – 9 seasons with Redskins, Chargers, and Broncos
- Executive Director of the White House Opportunity and Revitalization Council (Trump 1.0)
- On February 14, 2025, Secretary Turner launched the “DOGE Task Force to Eliminate Waste, Fraud and Abuse”
- On March 14, 2025, HUD’s Acting General Counsel Brian Miller issued memorandum “Application of DEI Executive Orders to the Department’s Legal Obligations to Indian Tribes and their Citizens”



Secretary Doug Burgum at Interior

- Doug Burgum was confirmed to be Secretary of the Interior on January 30, 2025
- Governor of North Dakota 2016-2024
- Founder of computer software company
- Chairs the National Energy Dominance Council
- Co-Chair of the Joint Task Force on Federal Land for Housing
 - See Burgum and Turner's "Federal Land Can be Home Sweet Home," Wall Street Journal, March 16, 2025
- Katharine MacGregor to be Deputy Secretary
- Billy Kirkland to be Assistant Secretary – Indian Affairs



Status of NAHASDA Reauthorization

- Congress has not acted on NAHASDA reauthorization since 2008
- Statutory authority expired in 2013
- Unauthorized statute risks loss of Federal appropriations
- In the 118th Congress, then-SCIA Chairman Schatz introduced a NAHASDA reauthorization, joined by then-Vice Chairman Murkowski
- Passed the Senate as an amendment to the National Defense Authorization Act but was jettisoned from the Act in Conference
- House NAHASDA efforts plagued by both a lack of interest among House Financial Services Committee members, and the ongoing Freedmen issue

NAHASDA Reauthorization, Cont'd

- The Senate Committee on Indian Affairs remains the friendliest committee of jurisdiction in Congress – all Members have tribal / Native constituents:
 - Lisa Murkowski (AK)
 - John Hoeven (ND)
 - Steve Daines (MT)
 - Markwayne Mullin (OK)
 - Mike Rounds (SD)
 - Jerry Moran (KS)
 - Brian Schatz (HI)
 - Maria Cantwell (WA)
 - Catherine Cortez Masto (NV)
 - Tina Smith (MN)
 - Ben Ray Lujan (NM)

NAHASDA Reauthorization, Cont'd

- For the last several congresses, strong efforts have been made with the House Financial Services Committee on the two key fronts:
 - Cultivating support by Committee Members
 - Resolving or sidelining the Freedmen issues

- Reason for hope
 - New Housing Subcommittee Chairman Mike Flood (R-NE)
 - New House Member Troy Downing (R-MT)
 - Early, positive discussions with Subcommittee Staff Director Ed Skala
 - Agreement to provide full or subcommittee briefings by NAIHC and others to educate new Members and cultivate support for the reauthorization

Leadership of House Committee on Financial Services

Full Committee on Financial Services



French Hill (R-AR)
Chairman



Maxine Waters (D-CA)
Ranking Member

Subcommittee on Housing and Insurance



Mike Flood (R-NE)
Chairman



Emanuel Cleaver (D-MO)
Ranking Member

Leadership of House Committee on Natural Resources

Full Committee on Natural Resources



Bruce Westerman (R-AR)
Chairman



Jared Huffman (D-CA)
Ranking Member

Subcommittee on Indian and Insular Affairs



Jeff Hurd (R-CO)
Chairman



Teresa Leger Fernandez (D-NM)
Ranking Member

Senate Committee on Indian Affairs



Lisa Murkowski (R-AK)
Chairman



Brian Schatz (D-HI)
Vice-Chair

Leadership of House Committee on Appropriations

Full Committee on Appropriations



Tom Cole (R-OK)
Chairman



Rosa DeLauro (D-CT)
Ranking Member

Subcommittee on Transportation, Housing, and Urban Development



Steve Womack (R-AR)
Chairman



James E. Clyburn (D-SC)
Ranking Member

Leadership of Senate Committee on Appropriations

Full Committee on Appropriations



Susan Collins (R-ME)
Chairman



Patty Murray (D-WA)
Ranking Member

Subcommittee on Transportation, Housing, and Urban Development



Cindy Hyde-Smith (R-MS)
Chairman



Kirsten Gillibrand (D-NY)
Ranking Member

Questions?





The Vault: Flood charts the GOP housing agenda

America's housing shortage isn't new. But Rep. **Mike Flood** (R-Neb.) wants to breathe fresh life into the issue among Republicans on the House Financial Services Subcommittee on Housing and Insurance.

We sat down with Flood last week to talk about how that's going to go.

By way of background: A dearth of housing stock is a local issue with deep roots in Nebraska. The state's unemployment rate has been among the lowest in the country [for a while](#), and the lack of housing has been a meaningful constraint on hiring and business growth.

Beyond that, Flood is bringing unusually strong bipartisan chops to the gavel. As a state senator, he led Nebraska's unicameral legislature between 2007 and 2013. "I was a coalition speaker — Republicans and Democrats in chair positions," Flood said.

Today, Flood says it's time to work with Hill Democrats. Democrats have spent much of the last decade [trying and failing](#) to advance housing solutions at the national level, but House Republicans haven't made it a consistent focus. (The Senate Banking Committee is a [different matter](#).)

"The reality is, Democrats really care about housing," Flood said. "We've met with our subcommittee, and our subcommittee cares about housing."

The agenda: Flood sees three big "buckets" for his subcommittee Republicans to focus on: **housing programs**, insurance reform and releasing government-sponsored enterprises from conservatorship.

In housing, reauthorization is the name of the game for Flood. There are a lot of federal housing programs that haven't been formally reauthorized in years, just extended. Flood says it's time to look under the hood.

"My focus is going to be more on the non-Section 8 HUD programs that affect supply, maybe prioritizing those a little more," Flood said, pointing to the Community Development Block Grant program at HUD. Tribal housing reforms could be another focus, Flood said.

Flood also said GOP lawmakers should weigh an "omni bill" with several disparate housing reforms rolled into one.

More Flood:

"Making it easier for manufactured homes — John Rose has got some legislation on that. Veterans housing bills — Monica De La Cruz has that. And then modernizing everything, not just from the reauthorization side, but some of the regulations. We've put out a call for stakeholders to let us know where the hurdles are."

Flood says the committee won't neglect the insurance side of the subcommittee either. That includes the National Flood Insurance Program. The Nebraska Republican said NFIP reform was a particular priority for GOP Reps. **Will Timmons** (S.C.), **Andrew Garbarino** (N.Y.) and **Scott Fitzgerald** (Wis.).

The Federal Insurance Office is another focus for the GOP — the focus of their ire, usually. But Flood said he wasn't in favor of abolishing the office.

"I've got members who want to eliminate it," Flood said. "I'm of the opinion that we need to have a seat at the table with what's happening in Europe."

Releasing Fannie Mae and Freddie Mac back onto the private market may be the most ambitious item on the list. Like House Financial Services Committee Chair **French Hill** (R-Ark.), he wants the Trump administration to kickstart the process. "Let's let the [Federal Housing Finance Authority] call its shot," Flood said.

But Flood also said that the clock is ticking. "Let the FHFA get 11 or 12 months under its belt, and let's prioritize GSE conversations, and potential privatization, for January 2026," Flood said. "There's some things it can do on its own, but anything they do should be paired with some reforms from Congress."

– *Brendan Pedersen*



2025 PRESIDENTIAL TRANSITION REPORT

Who We Are

Founded in 1974, the National American Indian Housing Council (NAIHC) is a 501(c)(3) non-profit organization comprised of over 250+ members who represent 450+ Indian Tribes and Tribal housing organizations serving American Indian, Alaska Native, and Native Hawaiian communities. Our membership represents tribal housing professionals from across the country who work each day to house Native families, elders, and veterans, largely without adequate funding.



NAIHC respectfully offers the following recommendations to increase the supply of quality housing stock available to Tribal members, cut down on bureaucratic red tape that prevents Tribes from accessing critical resources and, overall, combat the affordable housing crisis.

KEY RECOMMENDATIONS FOR THE TRUMP ADMINISTRATION

Issue a letter of support for the reauthorization of the Native American Housing and Self-Determination Act of 1996 (NAHASDA).

Rollback burdensome Build America, Buy America (BABA) requirements for Tribal housing projects.

Ensure the continuation of the Secretary's Tribal Intergovernmental Advisory Committee (TIAC), which provides meaningful, effective representation of tribal housing interests within HUD.

Direct the Departments of the Treasury and HUD to hold joint consultations on the barriers to accessing the Low-Income Housing Tax Credit (LIHTC) in Indian Country.

Background

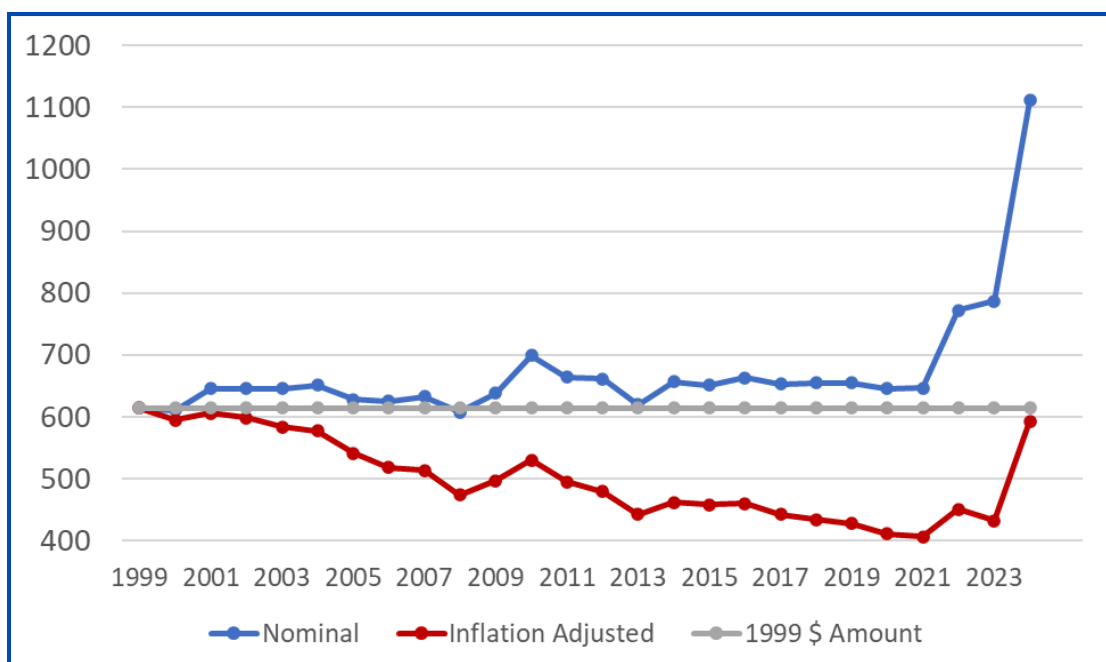
“Housing affordability” is a discussion about supply and demand. The availability and condition of housing and related physical infrastructure needed in Indian Country continues to lag far behind all other segments of the American population. Based on the most recent and comprehensive report from the U.S. Department of Housing and Urban Development (HUD), titled “Housing Needs of American Indians and Alaska Natives in Tribal Areas” (2017), the physical housing challenges faced by households in Tribal areas are significantly more severe than those encountered by the average U.S. household. The study estimated that between 42,000 and 85,000 Native Americans were “doubled up,” meaning they had no other place to live and would otherwise be in homeless shelters, thus they resided with family or friends out of necessity. Furthermore, due to historical Federal policies, much of the remaining land available to Tribes is on reservations that are “checkerboarded,” with trust land interspersed with allotted land and non-Indian owned fee land. This fragmented land ownership significantly hinders broad-based economic development in Indian Country.

Providing quality and safe housing for Tribal members and essential employees in Tribal communities is crucial for the health and welfare of those communities. Without sufficient, quality housing stock, Tribal governments cannot recruit essential employees such as healthcare professionals, law enforcement personnel and educators; individuals who are vital to ensuring the health, safety and education of Tribal members. ***To spur sustainable economic development and self-sufficiency for Native communities, the Trump administration must work with Congress to expand and streamline Federal programs that support affordable housing in Native communities.***

Homes remain unaffordable for too many Indian households for a variety of reasons. These reasons include escalating cost of building materials; the high cost of energy, impacting both construction and utility costs; severely limited and expensive transportation and related infrastructure; seasonal construction; the high cost of buying back lands that once were Tribally-owned; the high cost to build physical infrastructure in geographically isolated areas; and others. Given the shortage of supply, many families are forced to live in overcrowded conditions that negatively impact virtually all areas of their lives.

In 1996, to combat the affordable housing crisis in Indian Country, Congress enacted the Native American Housing and Self-Determination Act (NAHASDA). NAHASDA is the primary source of Federal financial assistance for Tribes and Tribally Designated Housing Entities (TDHEs). The NAHASDA established a variety of rental and homeownership assistance programs through the Department of Housing and Urban Development (HUD), including the Indian Housing Block Grant (IHBG). In 2000, NAHASDA was amended to add the Native Hawaiian Housing Block Grant (NHHBG), which provides funds to Hawaii’s Department of Hawaiian Homelands (DHHL), supporting affordable housing activities for low-income Native Hawaiians eligible to reside on the Hawaiian Homelands. The IHBG and NHHBG have had a remarkable impact on the ability for Native communities to fund housing programs and leverage capital for over 20 years, yet NAHASDA was last authorized in 2007, and was allowed to expire in 2013. Funding for these crucial programs subsequently remained relatively stagnant until 2024. It is critical to note that “flat funding” is really reduced funding each year due to the detrimental effects of inflation. Combined with a booming birthrate, this trend has only exacerbated poor housing conditions and a growing need.

Indian Housing Block Grant (IHBG) vs. Inflation Adjusted Purchasing Power



Beginning in FY23, it took 3 successive years to inflation-adjust funding for these programs to zero. ***The FY24 funding levels for NAHASDA programs must be the new baseline for Federal assistance for Indian housing.*** Housing needs, as well as construction costs, have risen exponentially in the past decade, and consistent support for tribal housing programs is needed now more than ever. Indian housing programs have a unique legal and equitable justification for discrete consideration apart from actions taken relative to other Federally-funded programs, including those within HUD. Without a consistent level of funding, Tribal housing authorities are unable to plan for projects that will likely continue past the fiscal year in which they begin.

Key Recommendations

I. Issue a letter of support for the reauthorization of the Native American Housing and Self-Determination Act of 1996 (NAHASDA).

The authorization of the Native American Housing and Self-Determination Act of 1996 (NAHASDA) expired on September 30, 2013, and reauthorization remains a top priority for Indian Country. The Administration should work with Congress to reauthorize NAHASDA and ensure the stability of the program's purchasing power. NAHASDA encompasses critical housing programs such as the Indian Housing Block Grant and the Indian Community Development Block Grant, both of which enable Tribes and their housing authorities to design and implement housing, community development and infrastructure programs that are tailored to their unique needs. These programs have resulted in the construction of tens of thousands of housing units in Indian Country. As it rests on Tribal decision-making, NAHASDA has also resulted in an increase in Tribal capacity to address housing and other needs.

Since the 113th Congress, NAHASDA reauthorization bills have been introduced and processed to different extents in each session, but none have been enacted into law. Although both Tribes and Congress generally support NAHASDA, there are occasional disagreements over certain provisions or policy proposals included in

the reauthorization efforts. ***It is crucial that NAHASDA be reauthorized by Congress and signed into law by the President.***

II. Rollback burdensome Build America, Buy America (BABA) requirements for tribal housing projects.

The Build America, Buy America Act (BABA) establishes a domestic content procurement preference - the “Buy America Preference” (BAP) – which mandates that products purchased for infrastructure projects funded by Federal grants must be produced in the United States. This legislation was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act. ***BABA is a bureaucratic, unfunded mandate which neutralizes the recent funding increases for NAHASDA programs that took a generation to achieve.*** The tariffs proposed by President Trump will accomplish BABA’s goals more efficiently with less administrative burden.

There are a number of concerning implications for Tribes and TDHEs now subject to the BAP:

- **Cost Increases** - The requirement for domestic production is expected to significantly raise the costs of materials and products.
- **Extended Timelines** - Obtaining waivers and exemptions from the Office of Management and Budget (OMB) is proving to be a lengthy process, causing delays in project initiation and completion.
- **Compliance Burdens** - Compliance with BABA will require substantial investment in terms of both time and financial resources. The terms and conditions of BABA are so onerous that compliance guidance is not even fully available *now*, despite the implementation of BABA for Tribes on October 1, 2024.

HUD's updated guidance on the Build America, Buy America Act (BABA) includes waivers and exceptions, such as the "De Minimis" waiver, which allows for a portion of project costs to be exempt from BABA requirements. Even so, many projects will still face significant cost increases due to the need to source materials domestically, which are more expensive and less readily available, especially in rural and remote areas. This has led to challenges in budgeting and planning. While the guidance has mitigated some of the financial burdens, it has not entirely eliminated the cost escalation issues that many projects encounter.

III. Ensure the continuation of the Secretary’s Tribal Intergovernmental Advisory Committee (TIAC), which provides meaningful, effective representation of tribal housing interests within HUD.

Continuing the TIAC is essential for fostering meaningful collaboration between Tribal Nations and HUD. The TIAC provides a structured platform for Tribal leaders to engage directly with Federal officials, ensuring that their voices are heard in the development and implementation of policies that affect their communities.

This committee helps to address critical issues such as healthcare, education, and infrastructure by facilitating the exchange of information, sharing of best practices, and offering recommendations that reflect the unique needs and perspectives of Tribal Nations. Having the opportunity to speak directly to HUD leadership in this forum has already broken barriers and brought positive change for Tribes and TDHEs.

By maintaining the TIAC, the Federal government demonstrates its commitment to honoring Tribal sovereignty and strengthening the nation-to-nation relationship, ultimately leading to more effective and culturally appropriate solutions for Indigenous communities.

IV. Direct the Departments of the Treasury and HUD to hold joint consultations on the barriers to accessing the Low-Income Housing Tax Credit (LIHTC) in Indian Country

Issue an order for inter-agency collaboration and consultation with Tribes and TDHEs on the barriers they face in accessing the Low-Income Housing Tax Credit (LIHTC). Years of experience in trying to leverage the LIHTC into the Tribal toolkit have demonstrated the need to establish a Tribal set-aside or other way to ensure fair access to the LIHTC for Indian Tribes and their housing entities. The most effective way for HUD and the Treasury to address barriers and obstacles using this program in Indian Country is for the two departments to hold joint consultations with Lenders, Tribes, and TDHEs.

Additional Recommendations

I. Continue to emphasize strengthening and encouraging homeownership in Indian Country.

Homeownership is a key engine for individual and familial asset building and wealth creation, yet Native people lag far behind other Americans when it comes to homeownership. This is particularly true for Native people living on Tribal lands, as Section 184, the Native American Home Loan Guarantee Program, has achieved some measure of success outside reservations, but has failed to move the needle on homeownership within reservations. The Final Rule on Section 184, published in 2024, includes promising updates to the program, but it is yet to be demonstrated whether these changes will have a significant impact on the program's success.

The new Administration, with HUD at the forefront, should continue to work with Tribal nations to craft a comprehensive approach to increasing Native homeownership in Indian Country, with a particular emphasis on the following:

- **Increasing** housing starts and mortgage lending options
- **Incentivizing** lenders to participate, particularly uplifting Native-owned lenders and Community Development Financial Institutions (CDFIs)
- **Closing the gap** on the affordability of housing development costs and the ability of Native people to make mortgage payments
- **Generating** localized, current data about Native housing needs and home ownership on an ongoing basis.

II. Streamline regulatory requirements that prevent Native families from accessing Federal housing assistance in a timely manner.

To more effectively leverage their funds, Tribes and TDHEs often combine Federal funds from different sources when beginning construction projects. Different funding sources frequently require separate environmental reviews, historic preservation checks, and cultural surveys, each adding time and cost to the construction process. This not only delays project timelines but also increases costs, as Tribes must allocate resources to navigate these duplicative requirements. These bureaucratic hurdles stall the development of much-needed housing, exacerbate existing shortages and impact the well-being of tribal communities.

Streamlining regulatory requirements, such as environmental reviews, will reduce administrative burdens on Tribes and TDHEs, allowing them to focus resources on actual development and maintenance.

Agency Recommendations

Department of Housing and Urban Development (HUD)

I. Appoint an Assistant Secretary for Indian Housing and Community Development within the Department of Housing and Urban Development

Elevate the position of Deputy Assistant Secretary for Native American Programs to an appointed position of Assistant Secretary for Indian Housing and Community Development. The Deputy Assistant Secretary for Native American Programs is located within HUD and administers the bulk of Federal housing programs for American Indians, and Alaska Natives. Though there has been progress on the housing front in recent years, Indian housing conditions still lag behind the rest of the country. An Assistant Secretary responsible for improving these conditions will have the ear of the Secretary and can more effectively advocate for meaningful change both within and outside of the department.

II. Take action to implement a consistent national assessment of Indian housing that identifies critical gaps and actionable solutions.

HUD is responsible for conducting annual reports on the state of housing in Indian Country, yet the last comprehensive study was conducted in 2017. This gap highlights a significant issue: the lack of consistent, high-quality, and quantitative research on housing statistics for Native American communities.

Despite recent efforts, HUD and the U.S. Census Bureau have historically failed to provide up-to-date and detailed data on housing in Tribal communities, which is crucial for informed policymaking and resource allocation. Without regular and rigorous studies, it is impossible to appropriately illustrate the unique housing needs and challenges faced by American Indian, Alaska Native, and Native Hawaiian communities. This has ultimately hindered efforts to improve living conditions and promote economic development in Indian Country.

HUD must establish a consistent, comprehensive review of housing in Indian Country. This should include variables such as the appropriateness of different types of housing, reasons for low rates of homeownership, creative ways to collateralize home mortgages, and related topics.

Department of Veterans Affairs (VA)

I. Extend the 2.5% interest rate reduction under the Native American Direct Loan (NADL) program.

The Native American Direct Loan (NADL) program currently offers a 2.5% interest rate reduction as part of a 24-month pilot set to expire in March 2025. This reduction has been crucial in addressing the high cost of housing, particularly in Indian Country, where affordability is a significant challenge for Native American veterans. Extending this below-market interest rate (2.5% or less) is essential for Native American veterans seeking mortgage financing on trust land through the NADL program.

With the enactment of S. 141 - the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act - more Native American veterans have gained the statutory authority to use the NADL program

to refinance non-VA loans. This makes the continuation of the 2.5% rate reduction even more critical. Extending the rate reduction will significantly improve affordability and positively impact NADL utilization. ***NAIHC strongly support this extension, recognizing its potential to enhance homeownership opportunities for Native Americans.*** Efforts made to improve the NADL program are appreciated, and we urge the continuation of the interest rate reduction to ensure housing affordability for Native American veterans.

Inter-agency Recommendations

I. Further develop inter-agency collaboration and engagement with Tribes and Tribally Designated Housing Entities (TDHEs)

Federal agencies should collaborate closely to address Tribal housing issues by leveraging their unique resources and expertise. This collaboration can be facilitated through the establishment of interagency task forces and working groups that focus on the specific needs of Tribal communities. Agencies and departments such as the U.S. Department of Housing and Urban Development (HUD), the Bureau of Indian Affairs (BIA), and the Rural Housing Service (RHS) should coordinate their efforts to ensure that housing initiatives are culturally appropriate and effectively address the severe housing shortages and overcrowding in Tribal areas.

By sharing data, aligning funding streams, and jointly developing policies, these agencies can create comprehensive and sustainable housing solutions. Additionally, engaging with Tribal leaders and communities in the planning and implementation processes will ensure that the solutions are tailored to the unique circumstances and preferences of each Tribe, fostering a more inclusive and effective approach to improving housing conditions in Indian Country.

II. Expand the positive impact of the Tribal HUD-VASH program by creating regional pools of vouchers and working with Congress to make the program permanent.

The Tribal HUD-VASH program is a demonstration program between the VA and HUD that provides housing vouchers to eligible Native veterans experiencing homelessness. Given that it is a demonstration program, the scope of the initiative has been limited to just 28 participating Tribes. Many tribal nations - which have not been able to participate in the demonstration program - have both eligible veterans and housing units but don't have access to vouchers.

A regional pool, rather than direct allocation to a limited number of tribes, would allow tribes and TDHEs to access these vouchers when they have both eligible veterans and units. The limited scope of the demonstration has proven successful, and regional pools of vouchers would improve accessibility to this critical program. Additionally, a bill introduced in the House in the 118th Congress (H.R. 4155) would convert the Tribal HUD-VASH program from a demonstration to a permanent program. NAIHC is in strong support of making this a permanent program, to ensure housing security for our Native veterans.

Contact Information

If you have questions or want more information about the policies outlined in this report, please email:

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To learn more about the programs mentioned, please visit naihc.net/advocacy and hud.gov/codetalk.

LEGISLATIVE PRIORITIES FOR THE 119TH CONGRESS

www.naihc.net



BACKGROUND

Founded in 1974, the National American Indian Housing Council (NAIHC) is a 501(c)(3) member organization comprised of over 250+ members who represent 450+ tribes and tribal housing organizations serving American Indian, Alaska Native, and Native Hawaiian communities. Our membership represents tribal housing professionals from across the country who work each day to house Native families, elders, and veterans, despite a historical lack of adequate funding.

POLICY PRIORITIES

Reauthorize the Native American Housing and Self-Determination Act of 1996

Since the 113th Congress, NAHASDA reauthorization bills have been introduced and reviewed, but none have been passed into law. Although both tribes and Congress generally support NAHASDA, there are occasional disagreements over certain provisions or policy proposals that have stalled reauthorization efforts. Following the January 28th freeze on federal financial assistance, tribes and TDHEs across the country lost access to their grant systems, highlighting the vulnerability of these programs. It is critical and urgent that NAHASDA regain its statutory authority and be reauthorized by Congress. Without the stability of reauthorization, tribes and TDHEs are unable to effectively plan for the future.

Streamline burdensome requirements that prevent Native families from accessing federal housing assistance in a timely manner

Tribes and TDHEs often combine various federal funding sources when beginning construction projects. Different funding sources frequently require separate environmental reviews, historic preservation checks, and cultural surveys, each adding time and cost to the construction process. These bureaucratic hurdles stall the development of much-needed housing, exacerbate existing shortages and impact the well-being of tribal communities. Streamlining regulatory requirements, such as environmental reviews, will reduce administrative burdens on Tribes and TDHEs, allowing them to focus resources on actual development and maintenance.

REINTRODUCE

- **The NAHASDA Reauthorization Act**
 - Extends federal housing assistance programs for American Indians, Alaska Natives, and Native Hawaiians with revisions to streamline and expand allowable housing activities.
- **The Native American Rural Homeownership Improvement Act**
 - Permanently authorizes Native community development financial institutions (CDFIs) to deploy USDA Section 502 Single Family Home Loan funds to Native Americans.
- **The Tribal HUD-VASH Act**
 - Provides permanent statutory authority for the Tribal HUD-VASH program.
- **The Tribal Trust Land Homeownership Act**
 - Modernizes the Bureau of Indian Affairs residential leasing, mortgage approval, and Title Status Report (TSR) processes to enhance access to mortgage capital on trust land.
- **The Tribal Rural Housing Access Act**
 - Sets aside 5% of select RHS program funding for Tribes and TDHEs.
- **The Tribal Tax Investment and Reform Act**
 - Treats Indian tribal governments as states for tax-exempt bond allocations and repeals limitations on their eligibility to issue tax-exempt bonds.
- **The Inspiring Nationally Vibrant Economies Sustaining Tribes (INVEST) Act**
 - Expands access to New Markets Tax Credits to assist Native American communities.
- **The Affordable Housing Credit Improvement Act**
 - Directs state allocation plan selection criteria for Low-income Housing Tax credits to include the housing needs of Native Americans and prioritizes housing developments in Indian Areas.



THE INDIAN HOUSING BLOCK GRANT (IHBG)

BACKGROUND

Tribal housing programs are primarily funded through the formula-based Indian Housing Block Grant (IHBG) which was created by the Native American Housing and Self-Determination Act of 1996 (NAHASDA). Under NAHASDA, over 500 tribes receive funds directly to their Tribally-designated housing entities (TDHE). Since its inception, the IHBG program has facilitated the construction or acquisition of over 42,500 affordable housing units and the rehabilitation of more than 110,000 units. Due to the funding provided through the IHBG since 1997, the number of distinct tribal housing programs has increased from 187 programs serving 467 tribes to 387 programs serving over 570 Tribal communities.

CREATING AFFORDABLE HOUSING IN INDIAN COUNTRY



HOUSING ACTIVITIES

IHBG funding supports Tribal housing programs' activities to decrease the high rates of substandard homes and overcrowding, address climate conditions, provide low-income rental assistance, disability access, crime prevention, increase homeownership rates and more.



BUILDING & MAINTAINING

Since Congress established a competitive IHBG grant program in 2019, 93 tribes have used over \$400 million to build ~1,550 new housing units. Many tribes also use this funding to maintain existing units due to increased development costs and loss of IHBG formula purchasing power.



PARTNERSHIPS

Autonomy over IHBG funds allows tribes to leverage private investments alongside federal dollars to create more affordable housing for Tribal citizens and families. However, higher construction costs and land acquisition remain the largest hurdle for Tribes.

TO SUPPORT AFFORDABLE HOUSING DEVELOPMENT FOR TRIBAL COMMUNITIES, THE FEDERAL GOVERNMENT MUST:

- **Reauthorize the Native American Housing and Self-Determination Act of 1996 (NAHASDA)**
 - Without the stability of reauthorization, tribes and TDHEs are unable to properly plan and finance future projects and maintenance.
- **Maintain a baseline of \$1.1 billion for IHBG funding in future budget requests**
 - This amount restores tribes' funding to the original purchasing power of NAHASDA and has opened up more opportunities for the construction of new units
- **Index future IHBG funding to inflation so Tribes aren't left behind again**
 - Until FY24, annual funding for tribal housing grew from \$600 million to only \$787 million since 1998
 - The full HUD Budget increased from \$23 billion to \$70.5 billion in that same time period.
- **Leverage private investments to increase the flow of capital to Native communities through Native Community Development Financial Institutions (CDFIs).**
 - Appropriate \$50 million to the Native American CDFI Assistance (NACA) Program in future budgets.