



The Federal Monitor

Current Affairs Affecting Tribes & Tribal Housing Programs

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The National American Indian Housing Council (NAIHC), a 501(c)(3) non-profit organization, assists tribes and tribally designated housing entities (TDHEs) in reaching their goal of providing culturally relevant, decent, safe, sanitary, quality, and affordable housing for native people in Indian communities, Alaska Native villages, and on native Hawaiian Home Lands.

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Congress in Recess until after November Elections

Congress is currently in recess for the congressional mid-term elections, which will take place on November 2, 2010. The House and Senate leadership have indicated their respective chambers will return to Washington on November 15, 2010. It is expected that during the Lame Duck session, Congress will attempt to pass an Omnibus Appropriations bill, legislation to extend various expiring tax provisions, and other matters. We also understand that following the Thanksgiving holiday, the House and Senate will again return to Washington to consider pending legislation.

Indian Veterans Housing Opportunity Act (H.R. 3553)

On September 27, the Indian Veterans Housing Opportunity Act was passed by the Senate. It was passed by the House in April and is currently awaiting the President's signature. Originally introduced by Representative Ann Kirkpatrick (D-AZ), the act amends NAHASDA to be consistent with the IRS Tax Code and other federal statutes and regulations by revising the definition of gross income to exclude amounts received by a veteran, or his or her family, for service-related disability, dependency, or indemnity.

FY2011 Appropriations

Prior to the recess, Congress passed a stop-gap funding measure known as a continuing resolution (CR) to fund government operations and programs until Congress returns to Washington in November for the Lame Duck session. The CR, H.R. 3081, preserves the FY2010 funding levels for most government programs in the interim, including our programs, and will be in effect until Dec. 3.

Click here for the text of the CR: <http://tinyurl.com/2fncldr>

During the Legislative Committee conference call on Thursday, October 7, a question was raised regarding the availability of FY2011 funding while the CR is in effect. According to information provided by HUD, it has not processed requests for advanced IHBG funding since 2007. For fiscal year 2011, no advance funding will be made unless there are sufficient carryover funds from prior allocations. Carryover amounts are not available as of the date of this publication. Tribes and their tribal housing entities must submit their Indian Housing Plans (IHPs) for FY2011 to request advanced payments.

Earlier in the legislative session, both the House and the Senate Transportation, Housing and Urban Development, and Related Agencies (THUD) Appropriations

Subcommittees approved funding bills that include the following funding levels:

- \$700 million for the Indian Housing Block Grant (IHBG) program;
- \$65 million for the Indian Community Development Block Grant (ICDBG) program; and
- \$3.5 million for Training and Technical Assistance (T&TA), to be provided by a national organization.

The above funding levels are the same as the FY2010 approved funding levels, and the IHBG and T&TA levels would be a substantial increase over the President's Budget Request (PBR) for FY2011. The FY2011 PBR was \$580 million for the IHBG program and did not include any funds for T&TA. The Senate and the House budgets would provide \$3.5 million for T&TA provided by a national organization representing Native American housing issues. The ICDBG program would be funded at \$65 million, which is included in both the Senate and House bills as well as the PBR.

The House THUD budget (H.R. 5850) was passed by the full House on July 29, with various amendments that do not affect tribal housing programs. The Senate THUD budget (S. 3644) was placed on the Senate Legislative Calendar on July 23 and still awaits consideration by the full body of the Senate.

Since none of the 12 appropriations subcommittees passed budgets prior to the recess, it is possible that Congress will adopt omnibus spending measures when it reconvenes in November instead of moving separate subcommittee budgets forward.

A WORD OF CAUTION: While it seems that we have made significant progress in our arguments for funding for tribal housing programs at a level higher than what is included in the PBR, we must be keenly aware of the current economic situation and constantly monitor the budget process in case there are attacks on tribal housing programs and funding. Given the crisis that our nation is facing in these tough economic times, we cannot be too cautious in moving our funding initiatives forward. NAIHC will continue to monitor the budget process and keep members aware of any threats that develop and, if threats do surface, we will call on the membership to support our arguments for increased housing appropriations in FY2011.

Information from the White House Regarding the President's FY2011 Budget Request

NAIHC recently received the following information, which describes the President's position regarding funding for Native American programs. While the IHBG cuts proposed in FY2011 were substantial, the President's budget included an overall increase in funding for Native American programs by approximately 5%. This illustrates the need for us to do continual education and outreach with the Administration regarding the importance of tribal housing programs as the cornerstone of tribal communities.

FY 2011 FEDERAL FUNDING CROSSCUT ON NATIVE AMERICAN PROGRAMS

Dear Friend:

President Obama's Fiscal Year 2011 budget request proposes \$18.482 billion, a 5%

increase over the Fiscal Year 2010 budget, in total funding for Native American programs. As part of the President's commitment to open Government, and greater engagement with tribal leaders, the White House Office of Public Engagement and Domestic Policy Council hosted a series of outreach calls with tribal leaders during which representatives from federal agencies provided details about the FY 2011 budget request and responded to questions. Each agency organized similar outreach activities and provided material to the public. Throughout these outreach efforts, tribal leaders requested a single document that showed the FY 2011 budget request for Native Americans.

The Administration is committed to strengthening and building on the nation-to-nation relationship between the United States and tribal governments, which is why we are pleased to provide a single document of the President's Fiscal Year 2011 budget request for Native American programs posted on the Department of Interior's website.

Direct link: <http://tinyurl.com/25pmqrg>

Website page (crosscut is at the bottom of the page): <http://tinyurl.com/2edbwx9>

As the Administration continues to take steps to address the many challenges facing tribal communities, we will continue to look to the wisdom of tribal leaders for input to help focus our decisions.

HEARTH (H.R. 2523, S. 3235)

The Senate Committee on Indian Affairs and the House Natural Resources Committee have passed separate versions of HEARTH, the "Helping Expedite and Advance Responsible Tribal Homeownership" Act. The Act was originally introduced in the House by Representative Martin Heinrich (D-NM) in May, 2009. The goal of the Act is to transfer approval of surface site leases from the Department of the Interior to tribes in order to expedite the process. Tribal leasing regulations would have to be submitted to the Secretary for approval initially, but thereafter, the tribe would no longer be reliant on the Secretary to review and approve individual surface site leases – a process that can currently take from three months to three years for the Secretary to complete. The Act is modeled on the Navajo Nation's leasing act, which became law in 2000. The Navajo tribe's leasing regulations were ultimately approved by the Secretary in 2006.

The versions differ in several respects, particularly in the environmental review portion of the bill. The Senate version (S. 3235) includes language that was reached by consensus through a series of meetings involving the Bureau of Indian Affairs, the Department of the Interior's Solicitor's Office, the Department of Housing and Urban Development, Congressman Heinrich's office, the Senate Committee on Indian Affairs, and the NAIHC. While the language in the Senate version does not require a NEPA-like review process in tribal regulations, it lays out the specifics regarding what an environmental review process must include.

The House version of HEARTH (H.R. 2523), based on an amendment submitted by Chairman Rahall (D-WV) of the House Natural Resources Committee, requires tribes to include a much stricter environmental review process in their proposed leasing regulations. It also includes mitigation provisions and gives the Secretary of the

Department of the Interior the authority to determine a tribe's capacity to manage a surface leasing program. The language in the House version was adopted from the Tribal Energy Resource Agreement authority contained in the Indian Tribal Energy Development and Self-Determination Act of 2005, which was not intended to apply to surface leasing.

NAIHC supports the Senate version of the Act. NAIHC is currently meeting with representatives of the Department of the Interior to discuss how to proceed on the bill and plans to meet with staff for the House Natural Resources Committee imminently. In the event that HEARTH does not pass during the remainder of this legislative session, it will have to be reintroduced in the new Congress.

Negotiated Rulemaking (Neg Reg)

The process of negotiated rulemaking under NAHASDA has concluded. The Committee, composed of two HUD representatives and 25 tribal representatives, reached consensus on all but four issues. The outstanding issues involve:

- recapturing expenditures on affordable housing activities;
- hearing requirements for Formula Current Assisted Stock (FCAS) overcounts;
- time limitations on noncompliance claims; and
- Line of Credit Control System (LOCCS) edits.

The regulation must now go through the HUD and White House Office of Management and Budget (OMB) clearance processes before it can be published for public comment, which could take several months. Formula negotiations will take place in 2012.

Save the Dates: Upcoming Events

The next Legislative Committee conference call will be held on **Thursday, November 2, at 1:00 p.m. EST**. We will discuss (1) housing-related resolutions that are going to be considered during the National Congress of American Indian (NCAI) Annual Convention, and (2) the upcoming NAIHC Legal Symposium.

December 7-9: The NAIHC Legal Symposium will be held at Planet Hollywood in Las Vegas, NV. The Legislative Committee meeting will take place on **Tuesday, December 7, from 4 – 6:00 p.m.** For more information on the Legal Symposium, click here: <http://www.naihc.net/index.php/events/legal-symposium/>

For further information regarding any of the items discussed herein, please contact Traci Hobson, NAIHC Governmental Affairs Director, at (800) 284-9165 or thobson@naihc.net.

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