



January 7, 2009

Rodger J. Boyd
Deputy Assistant Secretary
Office of Native American Programs
United States Department of Housing
and Urban Development
451 7th St SW., Room 4126
Washington D.C. 20410

Dear Mr. Boyd:

On behalf of the National American Indian Housing Council (“NAIHC”), I am writing to thank you and the Office of Native American Programs for your support of the *Native American Housing Assistance and Self-Determination Reauthorization Act of 2008*, (Pub. L. No. 110-411), which was signed into law on October 14, 2008. As you know, Native American communities suffer from poor housing and infrastructure as well as weak economies that generate little in the way of revenues and job opportunities for tribal members. In many meaningful ways, the new law will amend the *Native American Housing Assistance and Self-Determination Act of 1996* (“NAHASDA”) and improve the delivery of housing, housing-related infrastructure and community development projects to low income Native Americans.

As we look forward to the implementation of these amendments, we are focusing in particular on section 105, which amends section 106 of NAHASDA concerning rulemaking. Section 105 requires the Secretary to (i) initiate the rulemaking process not later than 90 days after enactment; (ii) establish a negotiated rulemaking committee not later than 180 days after enactment; and (iii) promulgate regulations to implement these changes not later than 2 years after enactment. Section 105 also requires the Secretary, in consultation with Indian tribes, to conduct periodic reviews of the regulations at least once every 7 years.

The NAIHC strongly supported the section 105 changes, which modifies the negotiated rulemaking process to ensure tribal involvement in the development of implementing regulations. In fact, the NAIHC’s Legislative Committee coordinated the development of the legislative proposals that were enacted into law in October. It is the intent of the NAIHC’s Board of Directors that the Legislative Committee will serve as an advisor to the Board throughout the negotiated rulemaking process.

To facilitate discussion on the 2008 amendments and the rulemaking process, the NAIHC offers the following categories of amendments, which we believe require varying degrees of deliberation:

- Category 1 – Amendments that are self-executing and require no rulemaking prior to implementation.
- Category 2 – Amendments that are technical in nature and necessitate a rulemaking but will likely require minimal deliberation, quick consideration by the Committee in a single session and quick enactment by the Secretary separately and in advance of completing negotiations on Category 3 items.
- Category 3 – Amendments that are substantive and necessitate a rulemaking and will likely be the subject of substantial negotiation.
- Category 4 – Amendments and regulations that are not intended or required to implement the 2008 amendments but which require periodic review under Section 105(2). In this regard, the Negotiated Rulemaking Committee should be empowered to identify either a portion of the existing statute and regulations, or particular existing regulations for review by the Committee, so long as this particular category of review does not include the IHBG allocation formula, which was already the subject of a recent negotiated rulemaking process.

NAIHC supports the position of tribes and TDHEs that any changes or additions to existing regulations and all new NAHASDA regulations that are required must be the product of negotiated rulemaking.

In the days ahead, the NAIHC will be engaged in internal deliberations on these proposed categories and the categorization of the newest amendments. Because the Secretary is required to initiate the rulemaking process by January 14, 2009, the NAIHC intends to draft and imminently provide to you a memorandum on the resulting categorization of the amendments so that the rulemaking can be accomplished in a disciplined and timely manner.

Thank you again for your support of the newest NAHASDA amendments and your ongoing support for housing and economic development in Native communities across the country. If you have questions, please do not hesitate to contact me.

Sincerely,



Marty Shuravloff
Chairman