

# TRUST RESPONSIBILITY: MEETING TRIBAL HOUSING NEEDS IN THE SOUTHWEST

*Position Paper by the Southwest Tribal Housing Alliance (SWTHA)*

## ABOUT SWTHA

The Southwest Tribal Housing Alliance (SWTHA) is the Region VIII representative organization to the National American Indian Housing Council (NAIHC). SWTHA represents the Native American housing interests of organizations in Arizona, New Mexico and West Texas.

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## PRIORITIZING AND REAUTHORIZING NAHASDA

The top issue, and concern, for tribal housing members of the Southwest Tribal Housing Alliance (SWTHA) is the reauthorization of the Native American Housing Assistance and Self-Determination Act (NAHASDA), which expired in 2013. NAHASDA is a significant legislation enacted in 1996 that reduces restrictive federal regulations and allows tribes to exercise its self-determination and self-governance by assessing and providing quality, affordable housing to its tribal members through block grants administered by the U.S. Department of Housing and Urban Development. Despite reauthorization bills failing to move out of committee in the previous two Congressional sessions, tribes in Region VIII continue to use NAHASDA to offer housing opportunities and housing-related community development projects to their community members. While overall conditions in Indian Country remain poor, housing conditions have improved as a result of NAHASDA. Consequently, reauthorization of NAHASDA, a powerful tool, would bring program stability and funding security to tribal housing entities in Region VIII and throughout Indian Country. On December 5, 2019, Representative Denny Heck (D-WA) introduced a bill to reauthorize NAHASDA. **SWTHA urges allies within Congress to support and pass this overdue reauthorization bill.**

## THE IMPACT OF COVID-19 ON TRIBAL HOUSING

The SWTHA exists to be the voice for Tribal housing by providing relevant, timely information, resources and a valuable network for the SWTHA membership, enabled, in part, by its mandate to budget funds for advocating at the Washington, D.C. level. Because of this commitment, there was a special meeting held on June 17, 2020 to start the conversation about SWTHA's role in the Tribal Nations given the impacts of COVID-19.

The reasons for this special session were two-fold. First, SWTHA is where the tribes and nations most severely impacted by COVID-19 call home; over 17,000 cases of COVID-19 have been diagnosed in Indian Country. Second, SWTHA is a clearinghouse of information and resources for tribes. During this time of crisis, it is more vital than ever to get information and resources about COVID-19 out to the SWTHA members.

In many tribal cultures, multigenerational housing is a common and important part of our cultures. COVID-19 is making that tradition untenable. It has magnified the lack of adequate housing, and shined a light on the lack of housing options and solid infrastructure, such as broadband access and water in rural housing areas - which will perpetuate the virus' toll on tribal communities. The root of these issues is the lack of NAHASDA funding to provide our peoples with safe, sufficient, affordable housing options.

While overcrowding and a shortage of affordable housing are not new issues, they have taken on a particular urgency since the pandemic began. It's not uncommon to see 18 or more people living in a 900 square foot house. The Department of Housing and Urban Development says that Indian Country faces a deficit of 68,000 housing units per year, but the real need is likely three times as much. With the overcrowding in most Native homes, social distancing is impossible. In addition, Native American populations have a disproportionate level of underlying conditions, including heart disease and diabetes, making them more susceptible to complications from COVID-19.

COVID-19 is acting like a magnifying glass on the chronic marginalization of Native communities and other alienated communities around the United States. An investment in housing is an investment in our health and resilience, now and in the future. Together as a nation, as Native and Non-Native peoples, we need to create solutions that aren't just a quick fix, but a sustainable, long-term remedy that will help the collective Native American society weather the storm now and for many generations to come. **We urge our allies in Congress to work with SWTHA to find the answers to the Native COVID-19 challenges.**

### **INVESTING IN TRIBAL HOUSING – CONGRESSIONAL APPROPRIATIONS**

For NAHASDA to work, funding is essential. Since fiscal year 2011, Congressional appropriations for the Indian Housing Block Grant (IHBG), the primary funding source for tribal housing, has remained stagnant at \$650 million. The fiscal year 2020 appropriations funds IHBG at \$646 million and \$70 million for the much-needed, much-used Indian Community Development Block Grant (ICDBG). Region VIII tribes heavily rely on the IHBG and ICDBG programs to fund infrastructure and rehabilitation services for low-income homeowners.



Funding cuts to any program certainly has devastating effects on tribal economies and community development. If IHBG is funded at the requested \$775 million, this funding will not meet all tribal housing needs, but rather will keep pace with the increased cost of housing construction, energy costs and other inflationary factors.

### **SWTHA urges Congress to fund housing and community development programs at the following amounts:**

Indian Housing Block Grant (IHBG): Fund at no less than \$775 million. IHBG funds are used for housing development, housing-related infrastructure and home repair and maintenance. FY20 funds IHBG at \$646 million.

Indian Community Development Block Grant (ICDBG): Fund at no less than \$100 million. ICDBG enables tribes to increase commercial, industrial and agricultural projects. FY20 funds ICDBG at \$70 million.

### **SWTHA VISION**

Region VIII Tribal Housing Advocate

### **SWTHA MISSION**

To be the voice for Tribal housing by providing relevant, timely information, resources and a valuable network for the SWTHA membership..

Title VI Loan Guarantee Program: Fund at \$2 million. Title VI funds assists tribes with rental assistance, development and management services, crime prevention and safety and model activities. FY20 funds the Title VI Program at the requested \$2 million.

Section 184 Home Loan Guarantee Program: Fund at \$10 million. Section 184 loans helps tribal members purchase a new home or rehabilitate an existing home or both.

Tribal HUD-Veterans Affairs Supportive Housing (VASH) Program: Fund at \$7 million. HUD-VASH funds help Native veterans who are at-risk or homeless with housing opportunities. FY20 funds HUD-VASH at \$1 million.

NAHASDA Training and Technical Assistance: Fund at no less than \$4.8 million. Technical assistance dollars help tribes navigate HUD regulations and applicable laws while trainings expand knowledge of operation and management. FY20 funding T&TA at \$7 million.

Native Hawaiian Block Grant: Fund at \$20 million. Adequate funds will increase the supply of affordable housing units and rehabilitate existing units. FY20 funds NHBG at \$2 million.

BIA Housing Improvement Program (HIP): Fund at its previous level of \$23 million. BIA HIP helps with home repair, renovation, replacement and new housing.

USDA Rural Development 502 Direct Loan Program: Fund a set-aside of \$50 million to establish a demonstration relending program in Indian Country. FY20 funds the 502 Direct Loan Program at \$25 million.

VA Native American Director Loan Program: Fund a set-aside of \$10 million to establish a demonstration relending program for qualified Native American veterans. FY20 funds the VA Native loan program at \$1 million.

*Leveraging IHBG and USDA Rural Development funds, Zuni Housing Authority constructed 54 homes for low-income families.*

Though funding for NAHASDA programs remain inadequate, SWTHA tribes are using IHBG and ICDBG money to provide homes for low-income families and rehabilitate houses for elderly and disabled tribal members. For example, the Zuni Housing Authority used IHBG and USDA Rural Development funds to construct 54 homes and the Pueblo of Acoma Housing Authority used ICDBG funding to address overcrowding and fix houses without suitable plumbing. Despite fiscal challenges, funding tribal housing programs in the southwest is working and worth the investment to provide families, elders and first-time homeowners with quality housing on their respected homelands.

### **FUNDING FOR TRIBAL LEASING REGULATIONS**

The Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act of 2012 allows tribes to opt out of Bureau of Indian Affairs (BIA) Secretarial approval requirements for tribal leases, and to develop and implement their own leasing regulations to meet their own needs—but it does not provide funds for technical assistance and support services to implement the regulations. As of June 2018, the BIA reported that 42 tribes are operating its own leasing administration—such as land surveying, reviewing leases and conducting environmental reviews—while many tribes are unable due to lack of funding. **SWTHA requests funding to implement HEARTH which, in turn, will help remove barriers to mortgage financing on tribal lands and open homeownership opportunities to tribal members.**

### **COORDINATING ENVIRONMENTAL REVIEWS**

Tribal housing entities collect funds from several different federal sources to build new homes or community projects, which means complying with several different agency environmental review guidelines. For example, if a tribal housing program plans to build an apartment complex using HUD, USDA and BIA funding, then the housing program must adhere to environmental review guidelines from HUD, USDA, and BIA. Some projects may require more than three different guidelines to ensure the projects will not have an adverse environmental or health effect on residents or negatively impact the surrounding environment. In 2016, HUD started encouraging the use of three different tools to help federal agencies and tribes streamline the process: the

Incorporation by Reference, Cooperative Agency Agreements and Adoption. **SWTHA members agree that all federal agencies dealing with tribes should adopt a consolidated environmental review process.**

**SWTHA asks Congress to reintroduce a legislation that considers the following:**

1. Development of a singular process to be used by all federal agencies in conducting environmental reviews;
2. Identification of specific tribal and tribal program responsibilities regarding environmental reviews; and
3. Coordination of combined training about environmental reviews that involves all federal agencies that deal with tribes.



#### **HOUSING OPPORTUNITIES FOR VETERANS**

*Through HUD-VASH funding and by expanding their service area, Zuni Housing Authority provided 10 tribal members with subsidized housing in Zuni, Gallup and Albuquerque.*

The Tribal HUD-Veterans Affairs Supportive Housing (VASH) program has helped to bridge tribes and veterans with opportunities and housing. As of June 2019, HUD reported that 26 tribes participate in the program and it has helped over 250 Native veterans find housing. For example, through HUD-VASH funding and by expanding their service area, Zuni Housing Authority provided 10 tribal members with subsidized housing in Zuni, Gallup and Albuquerque, New Mexico. In the first session of the 116th Congress, the Tribal HUD-VASH Act of 2019 was introduced in both the Senate and House, respectively, that would authorize the program passed the pilot period and ensure Native veterans receive critical housing services. **SWTHA urges allies in Congress to swiftly pass the bipartisan Tribal HUD-VASH Act of 2019.**

#### **METHAMPHETAMINE USE IMPEDING HOUSING**

Methamphetamine (meth) use is higher in the Native American population than any other population in the country. A 2006 study by the National Congress of American Indians found that Native Americans, Alaskan Natives, and Native Hawaiian have the highest Meth use in the nation (1.7%, 1.7%, and 2.2% of the population), compared to whites (0.7%), Hispanics (0.5%), Asians (0.2%) and African-Americans (0.1%). Reservation and rural Native communities are seeing abuse rates up to 30%.

Apache and Navajo counties in Arizona are the highest in the state regarding students using meth at least once. Of high school students at Fort Apache Reservation, 26% have used meth.

Recent testimony before the United States Senate Indian Affairs Committee noted that on the San Carlos Apache reservation, 25% percent of babies born on the reservation were born addicted to methamphetamine.

Furthermore, on the White Mountain Apache reservation, 30% of tribal government employees tested positive for methamphetamine use.

Reservations and Tribal lands in the Southwest are prime routes for Mexican drug cartels to bring meth and other drugs into the U.S. They know that if they are caught in Indian Country, they can't be prosecuted due to the Oliphant ruling. But while they're here, they're dealing and teaching Native Americans how to cook meth.

Cooking and smoking Meth contaminates houses to the point where they are wholly unlivable. Without remediation, residents can experience severe health effects, up to and including death. Depending on circumstances, the Tribe could be held liable for not remediating the house, and for any fire, explosion, or contamination from meth labs.

In March of 2015, the White Mountain Apache Housing Authority held a meeting because there had been several housing units that tested positive for meth. A similar meeting was held by the Zuni Housing Authority in 2018. Both agencies are concerned about the health and safety of their residents, the costs of remediation to clean up the meth residue - up to \$30,000 per unit, and the additional homelessness while residents are displaced.

Meth use and abuse is contributing to the tribal housing crisis, and SWTHA can not handle it alone. **SWTHA urges Congress to fully fund the BIA Housing Improvement Program (HIP) at its previous level of \$23 million to help defray some of the costs associated with Meth house remediation.**

## **EQUAL ACCESS TO HOUSING**

In September 2016, HUD issued a final rule "Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs" that ensures that HUD's housing programs are open to all eligible individuals and families regardless of sexual orientation, gender identity or marital status. Though supportive of the progressive move toward housing equality, several tribes are concerned this rule encroaches upon their sovereignty and self-determination. Tribes are held to the rule and prohibited from considering marital status in determining eligibility for occupancy in their managed units or in the provision of other affordable housing-related activities. **SWTHA requests that HUD amend the rule to ensure tribes' sovereignty is protected.**

## **MEANINGFUL TRIBAL CONSULTATION**

It is imperative that federal agencies actively and frequently engage in meaningful consultation with tribes, specifically before any formal or official platforms have been agreed upon. Consultation is a true example of a working government-to-government relationship and often eliminates barriers to progress or catches issues of concern. Unfortunately, many federal agencies have a history of delaying engagement with tribes or seeking tribal input only during the review process. For example, HUD proposed and issued several actions in recent years for which there was little to no consultation with tribes, such as the "Establishment of a Tribal Intergovernmental Advisory Committee." Further, the USDA held a tribal consultation at a national Indian organization convening, but to much disappointment the meeting was more informative in nature and not true tribal consultation. Issues in Indian Country are often more complex than they seem at first, in part because of the great diversity among tribes. An open process in the initial stages creates better and more efficient consultation. **SWTHA urges HUD, USDA and other federal agencies to make meaningful government-to-government tribal consultation a priority and follow with in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.**



## ASSURING NEGOTIATED RULEMAKING ENGAGEMENT

SWTHA members agree that HUD must adhere and be held accountable to the negotiated rulemaking process when regulatory changes are needed. In the past, HUD has not followed the negotiated rulemaking process resulting in unsupported changes. For example, HUD did not engage in negotiated rulemaking for the “Implementation of the Tribal HUD-VA Supportive Housing Program” and its potential effects on funding and programs subject to NAHASDA. This way of doing business with tribes is unacceptable. **SWTHA and tribes across Indian Country require assurances from HUD that it will follow the negotiated rulemaking process regarding any regulatory changes and its potential effects.**

## SWTHA RESOLUTION 2019-01

The resolution requests Federal Legislation Providing Tribes An Exemption To The Requirements of The Federal Flood Disaster Protection Act Of 1973. The Act prohibits the use of federal funds, including the Indian Housing Block Grant (IHBG) and the Indian Community Development Block Grant (ICDBG) on sites that FEMA has mapped as being in a special flood hazard area (SFHA), unless a community or tribe participates in the National Flood Insurance Program (NFIP) which imposes flood insurance requirements and building restrictions. Adopting an approved NFIP flood ordinance is a burdensome and costly process that requires a tribe to hire a certified flood plain manager, develop and enforce flood standards, require certified elevations when building or rehabilitating on floodplains, and maintain tribal records on all new home construction and rehabilitation. States are granted an exemption from the Act’s requirements by joining the NFIP before using federal funds on floodplains and said exemption is found at 42 U.S.C. 4003(a)(3). The state exemption applies to federal affordable housing funds provided to states, including HOME funds and CDBG funds, and HUD regulations at 24 CFR 58.6(a)(3), the HUD environmental regulations, and 24 CFR Part 55.1 (b)(1), the HUD floodplain management regulations. **SWTHA requests Congress to sponsor federal legislation providing a tribal exemption to the requirements of the Act, similar to the exemption available to states.**

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