

**U.S. Department of Housing and Urban Development (HUD)
Indian Housing Block Grant Formula Negotiated Rulemaking Committee**

**Session 2
September 17, 2013**

The session started with an opening prayer. Ms. Henriquez welcomed the group and said that she knows the group will work in good faith and be very productive. However, it is not clear when they will be able to reconvene given that Congress has not acted on the 2014 budget.

The Committee approved the selection of facilitators by unanimous consent. The Committee also unanimously approved the minutes from the August 27-28 meetings. The Committee reviewed the proposed agenda, and decided to move staff presentations on the formula and data sources until after the group completed its work on the protocols.

Development and Adoption of Committee Protocols

The Committee picked up where they left off at the last Negotiated Rulemaking meeting. They agreed to start by revisiting the unresolved issues in the protocols.

I. Participation

c. Constituents' Interests

A HUD legal representative stated that each member represents his or her Tribe or housing entity. A proposal to adopt the 2010 language was approved.

III. Decisionmaking

a. Consensus

A HUD representative reiterated that given the Negotiated Rulemaking Statute, if the group cannot agree on an alternative the default position is unanimous consent. Unless the statute changes or the Committee does something by Consensus to change it, the statute governs this group's decisionmaking process. The Committee voted on the 2010 version of Consensus. The proposal was not approved. An alternative proposal requiring 17 votes rather than unanimous consent was also not approved.

Committee members made several other proposals about how to define consensus, and then voted and rejected a definition of consensus that included: "Unanimous concurrence will be expressed by the lack of specific objection." The Committee also voted again not to pass the 2010 language. An alternative proposal that changed the number of Committee members required to pass a proposal from 17 to 22 also failed. After more discussion, the proposal to adopt the 2010 language was approved.

b. Voting

The proposal to adopt the 2010 language was approved.

c. Reconsideration

A proposal to require a three quarters vote to bring matters on which they haven't achieved consensus back for reconsideration failed. After some discussion, a revised proposal requiring a three quarters vote for a one-time reconsideration of proposals on which consensus had not been achieved with a time limit set by the Committee was approved.

d. Formula Runs

HUD proposed adding a new section d under Decisionmaking: "Formula runs may be conducted upon request of consensus of the Committee, and shall be limited to general runs that exclude tribal/recipient specific data in order to test changes in variables/elements of the formula." HUD is proposing this language in order to focus on policy changes as opposed to solely looking at the bottom line for individual tribes, and to establish a clear procedure for getting information.

Some Committee members strongly opposed putting any limitations on who can ask for formula runs and the number and type of formula runs they can request. Some members wanted the public to be able to request formula runs. The Committee discussed whether they wanted blind runs, which would present data but not identify tribes. They determined that data for all tribes has to be included in the formula run, but that a tribe may redact its information. The Committee rejected several proposals for handling formula runs. Committee members disagreed about whether or not the protocol should address formula runs.

After additional proposals were suggested and amended, the Committee decided to address formula runs under Section VI. Safeguards for the Committee Members, e. HUD Assistance to Committee Members.

V. Agreement

a. Product of Negotiations

The proposal to adopt the 2010 language was approved.

b. Final Report

The proposal to adopt the 2010 language was approved.

VI. Safeguards for the Committee Members

a. Good Faith

The proposal to adopt the 2010 language was approved.

b. Committee Member Diligence

The proposal to adopt the 2010 language was approved.

c. Cooperative Communication

The proposal to adopt the 2010 language was approved (with a grammatical correction).

d. Information

The proposal to adopt the 2010 language was approved.

e. HUD Assistance to Committee Members

The Committee revisited their discussion about the proposed new section d Formula Runs under Decisionmaking. Several proposals specifying how the process would work did not pass, including a proposal to adopt the 2010 language as it stands. It was reiterated that tribes cannot exempt themselves from data runs. If they do not want anyone to see their data, HUD will redact the tribe's name but their data will be included, since a formula run omitting the data for any one or more tribes would produce inaccurate results for all tribes. Further, the information is part of the public record. Other proposals stating who can make requests and get the results of data runs also did not pass.

The proposal to adopt the following language was approved: "HUD will provide requested information, technical assistance and/or formula data runs as needed for the work of the Committee, as requested by any Committee member. All requests and results shall be made available to the full Committee."

VII. Schedule

After failing to approve revised language, the proposal to adopt the language from the approved Charter was approved. A HUD representative stated that the Committee would meet as often as necessary to complete six meetings within the fiscal year starting October 1, 2013, budget permitting. It also was determined that the first two sessions do not count toward the six meetings because HUD is beginning a new fiscal year.

VIII. Facilitators

The proposal to adopt the 2010 language was approved.

IX. Co-chairs and Regional and HUD Representatives

a. Co-chairs.

The proposal to adopt the 2010 language was approved.

b. PFO and HUD Representatives

The proposal to adopt the 2010 language was approved.

c. Chair

The proposal to adopt the 2010 language was approved.

d. Appeal of Parliamentary Rulings

A proposal to adopt the 2010 language was accepted: "A parliamentary ruling of the Chair may be overruled by an affirmative vote of 80% of the Committee."

Co-Chair Selection

The Committee selected Ms. Bryan and Mr. Dollarhide as Co-Chairs. These appointments are effective immediately. While the Committee decided not to extend the term of the Co-Chairs beyond this session, they can be re-elected at the start of each session.

Public Comment

There was no public comment. Several tribal public officials in the audience were recognized.

Presentations

Brief History of Formula Current Assisted Stock (FCAS)

Todd Richardson, Acting Assistant Secretary for Policy Development at the Office of Policy Development and Research (PD&R), presented a brief history of Formula Current Assisted Stock (FCAS). The group started with the statutory requirements and developed a mission statement: determine the criteria for need that is fair and equitable to all tribes pursuant to the law. They then developed a set of goals based on the statute and the mission statement. They

established two working groups: current assisted stock (CAS) and needs. The group decided to allocate CAS funding for operating and modernization based on historical practice, but to do so on a flat per unit basis adjusted only for local area differences in cost.

Mindi D'Angelo from FirstPic discussed the IHBG funding formula and the role of Formula Current Assisted Stock (FCAS). There are two main formula components: FCAS and need. FCAS gets funded first, and the money that remains after funding FCAS funds need. Any funds that are not taken in a particular year are carried over to the next year. FCAS is the subset of the Tribe's current low-income housing inventory previously assisted under the 1937 Act. NAHASDA units do not count as FCAS. There is a baseline funding provision to protect tribes from receiving less money than they received in FY 1996.

Ms. D'Angelo discussed reporting dates and reporting requirements.

Need Portion of the Formula

Todd Richardson presented the history of the Need allocation. Negotiated Rulemaking started with the statute and then developed a mission and goals. The group decided to use U.S. Census data because it was available for all tribes and objectively measured. They identified seven variables they would use to determine need in Indian country, and developed weights that reflect how important each variable should be. They included a component in the allocation formula that allowed tribes to challenge Census data.

Peggy Cuciti discussed the need component of the formula. The purpose is to count need in traditional Indian areas. All tribes qualify for need funding. The formula determines each tribe's share of need. Needs are measured using specific variables from the Census, but data only is considered if it derives from a tribe's formula area. In 2006, HUD was directed to run the formula twice, once using single race and once using multi-race data. Each tribe receives their allocation based on whichever amount is higher, that is, whichever way they get a higher share of needs. Substantially more tribes come out ahead using single race data. Dr. Cuciti also addressed four special circumstances: population cap, minimum needs, 1996 baseline funding and overlapping formula areas.

All needs data are subject to review and challenge. The Formula Response Form (FRF) has instructions about how to change the values of these variables. Tribes have the right to appeal if they disagree with any of HUD's determinations.

The presenters answered the Committee's questions about need funding. HUD is not using 2010 Census data because the 2010 Census does not collect data on six of the seven variables used in calculating needs. The American Community Survey (ACS) does collect these data, and the group will get a presentation on the ACS tomorrow. A HUD representative said that HUD's job is to provide the Committee with the facts and to let the Committee make recommendations about changes. HUD plays an unbiased role in this process. Committee members asked about other sources used to challenge Census data and if they have been successful. Three sources have been used to challenge Census data in the past: tribal surveys using questions comparable to what the Census asks; Indian Housing Service (IHS) data in areas where Indians primarily rely

on the IHS for health care, but only for the person count; and tribal enrollment data only if the tribe gives significant per capita payments, but only for the person count.

| The group agreed to leave the last presentation for the next day. The first order of business will be to review and approve the completed draft of the protocols.

The meeting closed with a prayer.