

1. NAHASDA Assisted Units
  2. Data Challenge Procedures
  3. Continued use of FCAS *factors* and definitions
  4. Review of all regulations under subpart D and any statutory changes *if not otherwise also covered*
    - Statutory issue: demolished units that are not able to be rebuilt with same blueprint
  5. Recipients of FCAS money but have no needs
  6. HUD processes/practices that could be conflict with proposals
  7. Put a time limitation on a grantee expenditures
  8. 1000.306 C/Section 8
  9. Statutory Section 302.C as it pertains to FCAS funding not overall funding
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Re-Ordering:

1. Review of all regulations under subpart D and any statutory changes *if not otherwise also covered*
    - Statutory issue: demolished units that are not able to be rebuilt with same blueprint
      - The definition of “reasons beyond the control of the recipient”
  2. Continued use of FCAS *factors* and definitions
    - Defining TDC and AEL
  3. Data Challenge Procedures
  4. 1000.306 C/Section 8
  5. Recipients of FCAS money but have no needs
  6. Put a time limitation on a grantee expenditures
  7. Statutory Section 302.C as it pertains to FCAS funding not overall funding
  8. HUD processes/practices that could be conflict with proposals
  9. NAHASDA Assisted Units
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1. Review of all regulations under subpart D and any statutory changes *if not otherwise also covered*
    - Statutory issue: demolished units that are not able to be rebuilt with same blueprint
      - The definition of “reasons beyond the control of the recipient”
      - ~~The definition of “obligation”~~
      - 302.(B).1.A.ii. the unit is lost to the recipient by conveyance, demolition, or other means.
        - Units deemed to be rebuilt
      - 302.(B).1.C. If the unit is demolished and the recipient rebuilds the unit within 1 year of demolition of the unit, the unit may continue to be considered a low-income housing dwelling unit for the purposes of this paragraph.
        - Extending 1 year to more years?
          - Not allowing period to be so long at the same time being fair for everyone
          - Do not want to give incentive
          - Signing a contract to set a time frame by the home-owner, housing authority and ONAP
          - Sometimes, 1 year or even 2 years not enough; thus documenting steps of process

- HUD does not want something that they have to monitor constantly
- There still needs to be a “physical” unit at the end; therefore, a timeline for development is necessary
- What is the right timeframe?
  - 3 years?
  - Different timeframe for circumstances?
- Reasonable time for documenting process
  - Needs clear cut-off to avoid situation when the units never get rebuilt

4-24-2014

- Request yesterday to have Rodger come in about the president’s budget; FCAS workgroup wants to discuss this within the group; HUD wants to discuss this matter with the Committee; president’s budget was not a proposal, it was to start the discussion and bring the discussion out, and HUD is fine with discussion the matter with the FCAS workgroup
  - It should not be a legislative issue;
    - HUD apologizes for poor wording and poor choices, but it was not HUD’s intention to go around the Committee to resolve the issue.
    - The reason why HUD thinks that this is somewhat legislative issue because there may be statutory changes that are necessary.
    - This issue has been a prominent issue that has been discussed; having some lawsuits against HUD regards to this matter, although this should be discussed and resolved, there may be another way to resolve this; why not discuss this issue just like any other issue
  - 302.(1).B/D
    - “reasons beyond the control of the recipient”
      - HUD: this has been a difficult matter to administer because it depends on case by case and tribes/HA have been difficulties to get documentation to prove “reasons beyond the control”
        - Suggestion: giving 2-year window to complete the process of conveyance; in return of DOFA+27, there must be indication of predictability; after 27 years, there is no more funding
          - HUD is willing to hear the regulatory suggestions and fixes, but this is why this is a legislative issue
      - Tribes need the specifics of what the concerns are in fixing this matter
      - Tribes need to propose regulatory language that does not conflict with statutory; HUD will consider the suggestion
        - Tribe: are you confident that Tribes can come up with a regulation that can be accepted?
        - HUD: cleanest way would be statutory fix; and there are also chances that although this group may come up with a regulatory change that works, other Tribes may come in to challenge the change
        - Tribe: why wasn’t potential issue of changing “1-year” was not raised yesterday?
          - There are tribes that believe that some units should be eligible for funding forever; our job is not to stop tribes from bringing lawsuit, but to set a regulation change that suits situations; let’s

- discuss how to fix this issue that can satisfy the members and regulation
    - HUD: HUD is interested in discuss in inputing into this process in reviewing this conveyance rule;
    - Tribe: is time-period necessary in this regulation rather than specifically defining “reasons beyond control”
  - We will come back to the issue
- Issue of rebuilding within 1 year of demolition
  - Definition of obligation
    - Issue of obligation to rebuild the demolished unit on the same site;
      - We would like to have a broad enough language that lets the Tribe to determine where to rebuild the demolished unit
  - Reasonable time-frame to rebuild
    - If the case is to relocate in rebuilding the demolished unit, it may (typically) take more time to rebuild the unit
    - Throwing hard-rule regarding subsidy and obligation may fix the issue
    - Giving three-years
    - Staying within 1 year and recipient can request wavier
      - That will be against statutory
    - Define demolition (types) and free the other definition of 1-year requirement
    - Since the demolition is not under Tribe’s control, we need to separate the demolition issue
    - Expanding the definition of demolition to separate voluntary and involuntary demolition
    - “If the unit is demolished or by other means”
    - It will be counter-productive to define demolition because then the units are stuck with “1-year” rule
      - Should narrow demolition because there can be other projects that can be involved
    - HUD: we can separate the act of damage of unit and intention of demolition
      - Because some cases of natural disaster, the timeframe/process can be different
    - Expanding the definition of demolition can be safe; certification of obligation to rebuild 1-year rule and call it good
      - How about new site/old site issue?
      - The exception is the “demolished” not lost;
        - HUD: suggestion: indicate that demolition of purposeful of removing the existing unit to ready...
        - HUD: the stretching of “demolition” may not be necessary since the definition of demolition (dictionary) is not too specific
        - Tribe: instead of demolition, usage of word “replacement” so we can avoid defining every word on the regulation
          - Then we run into the purposeful demolition
        - HUD: the recipient certifies to HUD within 1 year of demolition, that intend to rebuild the unit and within 3 year of certification provide the documentation that the unit has been rebuilt.
        - Tribe: why do we need to define the demolition?

- HUD: Due to voluntary and involuntary demolitions
    - HUD: demolition does not mean the destruction of unit through.....;
  - When does the time period of “rebuilding (3-year)” starts?
    - IHP/APR
    - Date of demolition
    - Indicate the date of demolition in the certification?
  - Is 3-year rule set?
    - Since in cases of natural disasters, rebuilding unit can take more than 3 years; thus suggesting 4-5 years
    - Adjusting the IHP/APR can be done?
      - Instead of APR, just sending certification
    - Setting 3-year rule with subsidy ending after 3-years
    - HUD: If “timeframe” is (completely) removed, then the HUD receives the power
    - Timeframe of 3-4 years is more ideal due to some circumstances that may take longer
    - If the units are demolished, it IS tribe’s intention to rebuild; tribes are not looking to get more timeframe;
    - Should such cases of losing ownership included in the regulation?
    - Why should units that no longer exist continuously count as FCAS?
    - Should the certification be reported on IHP/APR or Formula Response Form?
    - Eminent domain should fall under this regulation
    - BREAK
- “Reasons beyond the control of the recipient”
  - FirstPic: Administratively, since we have to review each unit separately in researching the reasons beyond the control of the recipient, it is burdening to process unit by unit researching as well as increasing case loads.
  - HUD: the Committee needs to look into what kind of documentation needs to be provided in order to determine the “reasons beyond the control”
  - Does HUD want parameters for “D?”
  - FirstPic: if the “reasons beyond the control” is more specifically defined, then despite the workload, processing the units may be easier to deal with.
    - HUD: if we can regulate some of the policy, it may help the timing of processing
    - HUD: if there regulation is more specifically defined, it will be easier for HUD and for tribes (gives predictability)
  - Tribe: the cut-off dates should be necessary
  - Tribe: What are some of the situations that HUD has faced that are complicated?
    - HUD: if there is an effort shows by tribes to resolve the “reasons beyond the control” then HUD keeps the units on; but if there is no reasonable effort to resolve the “reasons beyond the control” then HUD can use this to remove the units;
  - Do we need to expand “legal impediment?” how does HUD look into “legal impediment?”

- HUD: we look into previous cases to refer to, if not, discussion with Tribe and HUD is necessary to determine the “legal impediment” cases.
- Is it HUD’s intend to change section “D?”
  - HUD: yes; if the Tribes work out the changes in section “D” then HUD will work on it
  - HUD will keep the framework of subsequent homebuyer;
- Now there is “somewhat” understanding of both sides on both ends, we should devote our time to come up with a language in “D” that works for both groups; right now
- Definition/parameter of reasonable efforts
  - Reasonable efforts may not be universal;
    - HUD: reasonable efforts can be framed in “time”
  - Can we take title status and apply the logic in discussion to that?
- Issue of delay because of TDHE or some outside party
  - FCAS should be terminated after a certain time
- Issue of the definition of “recipient”
- What is the quality of subsidy;
- In reality, in some cases, some individual tribe does not want to get title to their home because of some reasons;
  - There needs to be some ability to unique circumstances under time frame regulation
- Suggestion: at the mark of 25 years, there is a 1 time/1 year resolution to extend on unit level;
  - After 3 years (HUD accepts 1 year), the subsidy will drop completely.
  - Can these be decided in the regional level?
    - That will eliminate the consistency in decision making.
  - HUD: HUD is concerned more on administrative issues rather than on other issues
  - The tribes must acknowledge what the problem is before the 25 years (DOFA)
- Reasons beyond the control of the recipient is referring to situation of where the Tribes or TDHE have done everything that they can do and the situation is no longer in their hands
- Homebuyers can deny the document and not convey the unit – there are situations where you cannot just quick claim the deed
- There needs to be some kind of way to notify the “homebuyer” that the timeframe of 25 year is approaching.
  - Thus, the need of 2-year
- The problem of having an arbitrary time frame (2 year) after the 25 year term because this time frame that allows to explain the reasons beyond the control of the recipient is what causes the HUD and contractors to work hours to determine the reasons beyond the control or reasonable efforts
- It is not fair to have some tribes to be funded for those housing units beyond 25 years that are no longer eligible when others meet the requirements
- The relationship between subsidy, count, and unit
- Why did the congress have created the justification of this law
  - The congress had been spending a lot of money and time that this can be subject to criticism if the money is not used to ensure the process or maintain

- Is this a huge problem that the FirstPic is facing?
  - Although only half of tribes have FCAS and units keep conveying over the years, FirstPic continues to face that many units are reported “delayed”

4-25-2014

- Reviewing the 1000.318;
  - Does “demolished” include natural disaster?
    - Do we need to go back to discuss the definition of demolition from yesterday?
      - Perhaps it is necessary since some may question the definition
  - Voluntary or involuntary?
    - Demolition can be planned; in some cases, the decision of re-habitability needs to happen prior to demolition;
    - HUD: 1000.134; defines the types of demolition that include voluntary and involuntary; demolition that you choose to do and circumstances that were involuntary;
  - Date of demolition
    - Suggestion: having the date of demolition starting on the date of destruction;
      - HUD: when the demolition is completed?
      - Planned demolition;
      - There are cases when the demolished unit sits on site and don’t get reported;
      - There are fair amount vacant units that stay vacant due to financial issues and others; thus, in-habitability can cause units to stay vacant which is not on Tribes’ interest
      - The important issue here is to define demolition in regards to certification of demolition
  - Revising;
    - HUD: do the Tribes want the clock to start when the demolition starts or when the demolition is completed?
    - The trigger that was discussed yesterday is the date of certification
    - The demolition is when the big yellow truck runs the house over and demolishes it
    - HUD: the understanding of when the 1 year starting?
- THE GROUP HAS AGREED ON THE LANGUAGE

302.(1).(D)

- Two-years in conveyance;
- This is not a regulatory section but rather statutory;
  - Suggestion :
    - At DOFA+25, the unit will no longer count as FCAS
    - Give 2 years to work things out
    - If Tribe needs more than 2 years to satisfy the requirement, HUD will evaluate individual unit case to determine whether the Tribe can receive more years to complete the requirement (conveyance)
  - HUD: the suggestions sound like the current practice
  - As yesterday’s comment by HUD and FirstPic that the process is burdening, the suggestion was supposed to entail the reduction of staff in determining and giving Tribes more chance to complete the conveyance by extending time frame.

- This issue needs to be discussed in caucus since other tribes may feel differently regarding this issue
- Since there are some issues such as probate that require more years, 2-years may not be enough;
- How will HUD approach this issue legislatively?
  - HUD: the concern is to being able to this administratively since it has been difficult, we have been considering to have clearer and bright rules to ensure predictability; this is a discussion that needs to happen within HUD;
- Reasonable efforts
  - Actual action that has been taken by TDHE;
  - HUD: since there is no clear guideline of “reasonable efforts” that leave the decision up to HUD that eventually makes it unfair for some tribes by being under-funded;
  - Suggestion: having subsidy stops after two-years regardless of reasons and leaving the issues of delay in conveyance up to the Tribe or TDHEs to resolve
  - Suggestion: having 5 year plan (prior to +25) to start taking actions to resolve the issue in order to complete the conveyance on time; plan being having policies to ensure the conveyance
  - What about issues of BIA; tribes/TDHEs put reasonable efforts to complete the conveyance on time, but does not happen;
- Let’s revisit (B)
  - “beyond the control of recipient means after reasonable efforts” replace the “beyond the control of recipients” to “reasonable efforts”
    - If reasonable efforts can be satisfied, then reasonable efforts is satisfied;
    - The issue is how long you can count the unit as FCAS; there needs to be some timeframe to resolve the problem;
    - What is the reasonable period of “efforts”
    - The issue of delaying in conveyance may not appear until the period of conveyance
  - Policy for lengthy subsidy vs cutting subsidy
  - HUD: are there some expenses that drop once the unit approaches the period of conveyance?
    - How much of responsibilities do the Has have in maintaining the housings;
    - “subsidy” is not the correct term; the money started as “back-up” money for those who have more units to maintain those units until the units get conveyed within 25 years; the funds for Mutual Help (MH) units was given based on the logic that those units will be conveyed within 25 years;
    - There are 50 years of lease (25+25 renewal)
    - There needs to be a guideline to remove “subsidy” completely at some point
    - If the original purpose was to help maintain the additional units (the rationality), then why cut “subsidy” at all
    - HUD: there must be ways to justify “reasons beyond control”

- Since HUD already guides to provide evidence of “reasons for conveyance delays” that are greater than 2 years, why not change the regulation and come up with clearer guideline of reasons beyond control”
    - Looking at examples of cases that HUD had faced regarding delay in conveyance
      - Have decided to divide into sub-workgroup to discuss further
2. Continued use of FCAS *factors* and definitions
- Defining TDC and AEL
    - If the data challenge is not discussed that bases TDC and AEL, there is no point of discussing them;
    - FirstPic: TDC and AEL are not defined by the census
  - TDC and Formula; factors of FCAS
    - FirstPic: TDC is used for both FCAS and need side
      - TDC in need side is weighted in different ways than FCAS; TDC is a constant number published by HUD annual bases (mostly) and there are challenge procedures that go to TDC
      - AEL is historic number that is not challengeable;
      - Tribe gets a better number depending on AEL or FMR
    - Is AEL on both sides?
      - FirstPic: only on need side
    - Is there an information available for public to view AEL counts?
      - FirstPic: there are may not be a published document, but may be provided; however, in considering the FMR changes every year that it varies;
      - It is necessary to discuss which number is the legitimate number
    - AEL is a terrible figure that is not up-to date and are still being used;
      - There should be a substitute to AEL that gets updated to ensure up-to date numbers;
    - FirstPic: There is not a influential factor in AEL, but there is an influential factor built into the formula, but not in AEL
      - This is why despite the decreasing number in FCAS, the percentage steadies;
    - FirstPic: both AEL and FMR are weighted by unit counts; ratio compared to national weighted average
      - TA request for the numbers is an appropriate move;
  - Is there a suggestion to update FMR
  - 
  - Ms Cuciti came in to explain FCAS component to the workgroup;
    - FCAS start with count of units; each type of units carries out a different size starting subsidies based on national ratio; the starting subsidies are adjusted based on national weighted ratio every year;
    - Preliminary estimate of everyone’s operating system
    - For differences and local operating cost, there are adjustments; AEL or FMR
    - Because of the usage of National Weighted Average keeps the percentage steady
  - 
  - The report on AEL and FMR will be posted on [ihbgrulemaking.firstpic.org](http://ihbgrulemaking.firstpic.org); the individuals in workgroup will discuss this during the next session;
  - Although Tribes can challenge the number of FMR through process, that does not necessarily mean that Tribes who feel that their FMR is inappropriately high and receiving more grants will not challenge; this brings the problem of fairly distributing grant amounts;

- There is a potential chance that at the time of creation of AEL, they intended to have the number of AEL changes throughout;
  - Could each tribe/TDHE collect AEL themselves and report?
    - HUD: the report gives problems and issues of collecting AEL; since the report contains many issues that the group is discussing, it would be more helpful to read the report individually and come back to these issues on the next session
  - **THERE WILL BE A LINK THAT PROVIDE INFORMATION**
    - Please do consider that some of the provided data in the report may or may not be still available or valid.
3. Data Challenge Procedures
- Which components are relative to our discussion?
    - (a) An Indian tribe, TDHE, or HUD may challenge data used in the IHBG Formula and HUD formula determinations regarding:
      - 2) Tribal enrollment
      - 3) Formula Area
      - 4) Formula Current Assisted Stock (FCAS)
      - 6) Fair Market Rents (FMRs)
  - HUD has system to track consistent treatments;
  - Has the process been more consistent and developed in treating these cases?
    - HUD: there has been development in treating unique cases and general cases, further, HUD is very interested in listening and hearing from Tribes in improving the processing and decision making. Furthermore, throughout years of experience, the FirstPic has been keeping track and improving due to/not restricted to the volume of incomings
  - With imperfect data and not having the same type of issues compared to other tribes, what are some of the ways to improve the imperfect data (by the Tribe)
    - **THE GROUP WILL INDIVIDUALLY READ THE GUIDANCE OF CHALLENGING (Q&A) AND DISCUSS THIS ISSUE FURTHER**
  - Will it be more helpful to see how many challenges have been made for the items listed under (a)?
    - How many, outcomes, determining factor (6), (7) – TA Request