**FCAS Work Group**

7/29/14

**Item #6: Time Limitation on Grant Expenditures**

The FCAS work group made a TA request at the last meeting for information about tribes and their unexpended IHBG funds. LOCCS balances report information cannot be released without a Freedom of Information Act (FOIA) request. The FOIA request has been made, and hopefully the TA request information will be available at this session. The group discussed why this issue had to be addressed as a FOIA request rather than HUD just releasing the requested information to the FCAS work group. The FOIA request is being expedited.

**Item #1 Demolition and rebuild**

The demolition and rebuild language out on the website for full committee consideration.

**Item #2: 2008 Indian Housing Operating Cost Study**

This cost study is related to local area cost adjustments such as AEL and FMR. At the last meeting the FCAS work group made TA request #22 – formula run based on adding in factor 515 program local cost adjustment factor. The run would (1) use the better of FMR, AEL and 515, and (2) use FMR and 515.

Ben Winter of PD&R addressed the TA request for the 515 data simulation. He contacted the United States Department of Agriculture (USDA) and started the process to get current data (the original study used old data that is no longer available). It will take several months to get the data via an inter-agency agreement process, aggregate the data and do the requested analysis. The data probably will not be available for the next negotiated rulemaking session. The group will make a TA request to the USDA to discuss how they created and used the 515 factor, as well as the quality of the data.

The work group will put in a TA request for a summary of the Indian Housing Operating Cost Study. They are still waiting for information from the USDA to run the requested simulation.

**#3 Mutual Help Conveyance**

A sub-group is dealing with this issue.

**#4 1000.306c regarding Section 8 Units**

Consensus to remove 306c and call it a technical correction because 306c is inconsistent with the rest of the statute.

Discussion of this issue led to a discussion of converted units. Units are counted as the original type of unit if converted after FY 1997. The drafting committee has created draft regulation language around this issue as follows:

**1000.316** How is the Formula Current Assisted Stock (FCAS) Component developed?

The Formula Current Assisted Stock component consists of two elements. They are:

(a) Operating subsidy. …

(b) Modernization allocation. …

[add new subsection:]

(c) Conversion. Conversion of FCAS units from homeownership (Mutual Help or Turnkey III) to low-rent or vice versa.

(1) If units were converted before October 1, 1997, as evidenced by an amended ACC, then those units will be counted for formula funding and eligibility purposes as the type of unit to which they were converted.

(2) If units were converted after October 1, 1997, the following applies:

(a) Funding type. Units that converted after October 1, 1997 will be counted as the type of unit specified on the original ACC.

(b) Continued FCAS eligibility. A unit that is converted to low-rent will be treated as a low-rent unit for purposes of determining continuing FCAS eligibility. A unit that is converted to homeownership will be treated as a homeownership unit for purposes of determining continuing FCAS eligibility.

(c) Multiple conversions. A unit converted after October 1, 1997, will be considered as the type converted to when determining continuing FCAS eligibility, whether or not it is the first conversion.

(3) The Indian Tribe, TDHE, or IHA shall report conversions on the Formula Response Form.

The work group is sending this draft to the drafting committee to finalize for presentation to the full committee.

The group discussed the allocations for Low rent (LR), Mutual Help (MH) and Section 8 units. A group member asked if they could discuss how funding is allocated (1000.316) – i.e., why there is a separate amount for maintenance and for modernization. He thinks this method is overly complex and may not be relevant. HUD said it was done this way because different adjustment factors are applied to operating and modernization costs.

They came up with new issue re: conversion – reviewing new section 1000.316 with new language being developed by the drafting committee.

**#5 FCAS Money with Low or No Needs Funding**

This issue addresses tribes that are receiving FCAS funding but have low or no needs. The work group submitted two TA requests (#20 and #23) on this issue. These TA requests have been completed.

TA request #20 – list and allocation amount for all tribes receiving 1996 hold harmless amount in FY 2014. The hold harmless is based on total amount received for both FCAS and Needs in FY 1996. There are 19 tribes on the list. A group member asked why most of the tribes on the list are in the Phoenix region. The Phoenix region has the largest number of grantees.

A narrower issue is why we are funding tribes that no longer have FCAS. This is a separate issue from why we are funding tribes that have low or zero Needs.

TA request #23 – Needs amounts for tribes with low or no Needs – run separately for tribes with and without FCAS.

A work group member proposed that they make a list of legislative issues – for example, funding tribes that no longer have FCAS, or funding tribes that have zero Need -- and ask NAIHC to address them.

The work group is submitting a TA request to determine which tribes don’t receive their grants, and how much money goes back into the pot because they aren’t claiming it.

Very small tribes may have no FCAS and low Needs. They have low Needs because they have very small enrollments, but they do have low-income persons and do need funding.

Given the complexity of this issue, it was proposed that they designate a sub-group to look at this issue. There are some statutory requirements that would have to be changed to address this issue.

The group studied the issue and there is nothing to be done because of 1996 hold harmless/minimum funding.

**Item #6: Time Limitation on Grant Expenditures**

Originally, funds available until obligated and expended. In 2012 and subsequent years, the language was changed to say that funds remained available until a specific year, which is approximately 10 years from the appropriation. This means that HUD has four or five years to obligate the money, that is, sign the grant agreement awarding funds to a grantee. The grantee then has five additional years to expend that money. After the specified period, any unspent money is automatically recaptured and sent back to the U.S. Treasury. They could shorten the time from 10 years.

At the last meeting, the work group talked about coming up with a majority and minority opinion.

**From last meeting:**

***Suggested Approaches to Dealing with Loss of Funds due to Not Expending Funds within Time Limit***

HUD’s opinion is that the group can’t recapture money from tribes that already have been allocated the money and aren’t spending it within the time limit. However, they can reduce future grants for tribes that have not expended funds in a timely manner.

An FCAS work group member suggested adding a competitive component to the formula. Any money that is put back into the formula would be put into a competitive pot. HUD says that this would create a new program – would need a Notice of Funding Availability (NOFA), etc. It would be different program than the IHBG program.

The group looked at the HUD Appropriations Act for 2014, which is in the President’s budget request. The language states that tribes can get less than their 1996 baseline under certain specified circumstances. The language clearly states that, if enacted, this appropriations act overrides section 302(d) of NAHASDA. Whether or not this language is enacted, HUD is getting pressure to deal with unexpended balance in the IHBG program. For example, if HUD doesn’t address the unexpended balance, Congress might reduce IHBG funding.

Although it doesn’t give a time frame, the way the 2014 Act reads, it seems to correlate with three years’ worth of grant amounts assuming that grants are relatively stable over time.

HUD suggested that the group focus on a way to incentivize tribes not to accrue large amounts of money over time by reducing their future IHBG allocations.

***Resolution:*** The group made a TA request to determine the extent of unexpended funds using LOCCS balances from January 1, 2014 (or as close as possible), including a column denoting the percent the unexpended funds are of a tribe’s allocation. The request would identify whether a tribe is approved as an investment tribe and, if possible, the amount. The working group will send the language to the drafting committee with x’s for the amount of times and monetary amounts. They will revisit this issue at the next Negotiated Rulemaking Session, after they have the TA data.

**This meeting:**

Since HUD cannot recapture unexpended funds, it was suggested that they reduce or not give future allocations to tribes that have too much unexpended funding.

It was suggested that the FCAS work group create a subgroup to address this issue. They could address this issue under 1000.302c – (#7 on our list) other factors for consideration. They will pass this on to the drafting group to formulate language.

**#7 302c as it pertains to FCAS funding (not overall funding) -- Other Factors for Consideration**

**From last meeting:**

Currently under IHBG program HUD does performance-based monitoring reports. HUD makes about 50 monitoring trips each year. They also do an annual risk assessment, but an assessment of risk is not an assessment of performance. This is because there are factors in the risk assessment that are not under the control of the grantee, e.g., amount of money they receive

Question of how to gauge administrative capacity and whether they want to tie money to administrative capacity. Perhaps would do a one-time assessment of administrative capacity, and tribe would get a bonus if it passed.

Another view is that this section focuses on identifying tribes with challenges (rather than those that have administrative, etc., capacity) and whether we should do something to help these tribes. The group discussed whether tribes with less capacity should be “rewarded.” As stated above, the other approach is to provide an incentive for tribes that rise to the level of administrative capacity.

**This meeting:**

Statutory language says that they will “consider” other factors in the funding formula. It doesn’t say that are required to add other factors.

The group needs to determine the criteria for additional funding. It was suggested that tribes that have good audit findings get extra money, but audits are limited to tribes with funding above a certain level. A work group member wanted to know if they should reward tribes for doing their job.

It was suggested that tribes with additional challenges that administered their program well – e.g., geographic distribution (e.g., tribes with housing spread out over large land areas) -- get extra funding because of time and effort involved. However, this may be accounted for by local area cost adjustments. Navajo disagrees – they contend that the cost is extremely high to maintain highly dispersed housing units, particularly those located in rural areas. The Department of Transportation has roads data which might provide an indicator of size and distance. The work group tried to identify a national factor that measures geographic dispersion and the cost to maintain FCAS units. The problem with using roads is that parts of Alaska are not accessible by road.

This discussion brings the group back to the role of AEL and other local area cost adjustment factors.

This would be the place to deal with tribes that have higher infrastructure costs. Maybe HUD could have a weighting factor based on geographic distribution. It would be difficult to develop a measure of all the factors involved in geographic distribution – gas costs, miles between subdivisions, condition of roads, etc. The group will make a TA request for BIA roads data. They also want IHS data on water and sewers. This data is still under consideration.

**#8 HUD Processes and Practices in Conflict with how Program is Run Today**

TA request 3 asked for applicable guidances and notices. 1000.336 deals with challenging formula data.

HUD suggested that all grantees be asked to certify that there are households within their jurisdiction that are below 80 percent of median income. Currently, households that receive less than $200,000 under the FCAS component must certify to this to receive minimum funding. Another HUD staff member said that adding this certification may not be legally defensible.

The only process/practice that is out of step with current practice is guidance 98-19 and this group is working on it.

They resolved 98-19. They went through all the guidances and notices in their TA request and didn’t find anything else that needs attention.

**#9 NAHASDA Assisted Units**

The group discussed the definition of a NAHASDA assisted unit. A work group member asked how many NAHASDA assisted units there are. To collect this data, they would have to define eligible activities, for example, and then figure out how many NAHASDA assisted units were served. However, some activities are tracked for households, not units. TA request for number of units developed under NAHASDA.

Two issues with counting these units – (1) adding these units would leave no money to fund Needs, and (2) the haves would get more funding at the expense of the other tribes.

The work group made a TA request for history of the proposed rule from preamble language for previous Negotiated Rulemaking sessions on providing a subsidy to NAHASDA units.

It was suggested that HUD subsidize mixed housing – let tribes build a certain percentage of moderate income housing in addition to low income housing.

A work group member proposed:

“Recognizing that new units developed with NAHASDA funds often require a subsidy to serve low income residents, and no additional funds are available for that subsidy without adversely affecting the Needs component, the Secretary shall consider project-based subsidies for 100 percent NAHASDA-assisted projects that relax income eligibility restrictions to provide a subsidy for a percentage of low-income residents.”

Tribes already can use IHBG funds to subsidize low income residents in housing that isn’t fully NAHASDA funded. In addition, there are provisions that allow for serving over-income residents provided that the tribe gets HUD approval, which may not be forthcoming.

If this proposal were accepted, tribes could serve all tribal members, not just low-income residents. The high income persons in the project would subsidize the low income persons. However, this proposal may be outside the purview of negotiated rulemaking.

They tabled this idea for possible discussion at a later date.

A work group member requested a table that tracks each issue -- how it was addressed and the current status of the issue.