**FCAS Work Group**

7/31/14

Today’s agenda – break at noon.

**Item #6, Time Limitation on Expenditures**

The FCAS work group continued its discussion of item #6. They filled in the missing parameters in the proposed language. The work group voted on the following revised proposal. There was one vote against the proposal because of concern about the implementation date. The proposal is incomplete because the group hasn’t addressed the 1000.336 issue.

**Code of Federal Regulations**

**Title 24 - Housing and Urban Development**

Subpart D—Allocation Formula

**§1000.310 What are the components of the IHBG formula?**

The IHBG formula consists of four components:

(a) Formula Current Assisted Housing (FCAS) (§ 1000.316);

(b) Need (§ 1000.324);

(c) 1996 Minimum (§ 1000.340); and

(d) Undisbursed IHBG funds (§ 1000.342).

**§1000.336 Issue**

**§1000.342 Are undisbursed IHBG funds a factor in the grant formula?**

Yes, starting on October 1, 2017, and each year thereafter. After calculating FCAS, Need, the 1996 Minimum and formula repayments (not including enforcement repayments) for all tribes, the undisbursed funds factor shall be applied as follows:

1. The undisbursed funds factor applies if an Indian tribe’s initial allocation calculation is $5 million or more and the Indian tribe has undisbursed IHBG funds in an amount that is greater than 3 times its initial allocation calculation.
2. If subject to paragraph (a) of this section, the Indian tribe’s allocation shall be the greater of the initial allocation calculation minus the amount of undisbursed IHBG funds that exceed 3 times the initial allocation calculation, or its 1996 Minimum.
3. For purposes of this section, “undisbursed IHBG funds” for an Indian tribe means the amount of IHBG funds for an Indian tribe in HUD’s line of credit control system (or successor system) on October 1 of the fiscal year for which the allocation is made. For Indian tribes under an umbrella TDHE (a recipient that has been designated to receive grant amounts by more than one Indian tribe), and with an initial allocation of $5 million or more, their undisbursed IHBG funds are the proportion of the umbrella’s balance in HUD’s line of credit control system (or successor system) corresponding to the tribe’s proportion of the initial allocations of all tribes under the umbrella.
4. Amounts subtracted from an initial allocation calculation under this section shall be redistributed proportionally under the Need component among all Indian tribes not subject to paragraph (a) of this section except that an Indian tribe whose initial allocation calculation was increased pursuant to §1000.340(b) shall receive the greater of:
5. its 1996 Minimum; or

2) the sum of FCAS, Need and its proportional redistribution under paragraph (d) of this section.

**Discussion of Proposal**

***NHA Statement and Responses***

NHA is willing to accept HUD’s proposal with 1000.336 appeal process provision (that allows for formula challenge). They agree with the $5 million floor and three times a tribe’s annual allocation, which is a huge concession on behalf of NHA. In exchange, they need an agreement that this rule will not take effect until 2018. This will give Navajo time to implement its five year plan to spend down allocated funds.

A work group member stated that he appreciated NHA’s concession and HUD’s contribution to addressing opportunity for a fair hearing if a tribe wants to appeal a decision. However, he was concerned that 2018 might not be satisfactory to Congress. HUD stated that it is difficult to advocate for more funding for the IHBG program when there are large unexpended balances, and thanked NHA for their willingness to compromise on this issue. HUD recognizes that Navajo and other tribes have substantial needs. HUD’s goal is for the full committee to vote on this issue at the August session of Negotiated Rulemaking. They don’t want to go a full year (until the study group has finished its work) without HUD and tribes having certainty on this issue. They also are afraid that Congress will take unilateral action if this group does not act. HUD suggested that the work group complete the rest of the proposal, but give HUD until the Scottsdale session to work on 1000.346, the due process provision. The work group asked that HUD make their draft on HUD 1000.346 available to them for review and revision before the Scottsdale session. It was proposed that HUD be a key player in a work sub-group to develop 1000.346 language, and that the full work group vote on this in Scottsdale. HUD agreed to this plan.

HUD clarified that funds that tribes have approval to invest represent an acceptable use of NAHASDA funds.

***Threshold***

A work group member asked if the work group wants to add a second tier that, for example, says that tribes can’t have more than five times their allocation in unexpended funds. A work group member wants to make sure that small tribes with minimum feeding need to be allowed to accumulate funds so that they can develop housing. He does not want to add other tribes into the calculation. Another member stated that this work group is committed to supporting small tribes and will not to anything to prevent them from accumulating money to develop housing. Someone suggested taking out the threshold dollar amount so the regulation applies to all recipients. Other work group members reiterated that this action would hurt small tribes, which may need to amass a number of years’ worth of allocations in order to develop housing.

Under Section 302d of the statute, some tribes get 1996 minimum funding. Since HUD is not taking a formal enforcement action but rather determining what a tribe’s grant is, tribe’s grant amounts cannot be less than the 1996 minimum. HUD is proposing a regulatory change so they need to comply with the statue.

***Implementation***

HUD asked what Navajo means by 2018 – do they mean October 1, 2017 as the date that proposal would apply? Navajo stated that the date is October 1, 2017, the beginning of Federal FY 2018. The work group discussed when HUD would take action against a tribe that falls under the rule. If there is a misalignment between the date the work group proposes and what Congress states, we would update the regulation to align with any law that Congress passes. It is unlikely they can get a final rule before Federal FY 2018. However, one work group member stated that a client wants an earlier implementation date. Navajo said that they need absolute certainty of FY 2018 start date.