

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

**Session 5
July 29, 2014**

The meeting started with an opening prayer.

Welcome

Jemine Bryon, Acting Assistant Secretary for Public and Indian Housing, welcomed the group. She stated that, because they are uncertain about future funding, it is crucial to make the most of the last two Negotiated Rulemaking sessions and bring forward recommendations.

Committee Review and Approval of Proposed Agenda

Ms. Bryon stated that Census American Community Survey (ACS) has agreed to be present at today's meeting, and that she wants the full committee to place Census ACS on the agenda so that they can discuss Census ACS and some TA requests. The Census ACS presentation currently is scheduled for the Needs work group, but HUD wants everyone to hear the presentation so that all of the committee members are aware of Census ACS capabilities and limitations.

The chair of the FCAS work group said that he opposed making the presentation to the full committee because his first and foremost priority is getting back into work groups so they can get the work done that they have been charged to do. In addition, he thinks issues about ACS need to be raised in the study group over the next year, rather than in the committee. Ms. Bryon responded that the purpose of the presentation from the Census Bureau is to form the foundation for any Needs work group discussion. The presentation will facilitate a broad discussion about the role that the Census Bureau has played over time and what it can do to assist them. Roger Boyd, Deputy Assistant Secretary for Native American Programs, said that the work groups have submitted 26 technical assistance (TA) requests over the last several months, and that they will tie the TA requests into the presentation so that everyone hears about the impacts of the proposed change to ACS data.

At this point, the committee co-chair took a roll call for the official record and determined that the committee has a quorum.

The proposal to amend the agenda did not pass. Since they already have been invited to Negotiated Rulemaking, the Census Bureau will make its presentation to the Needs work group today, rather than wait until the study group has been established. The

presentation will be open to all committee members who would like to attend, and also to the public.

The committee passed the agenda as originally set.

Committee Review and Approval of Minutes from Fourth Session: June 11-13, 2014

The committee approved the minutes from the fourth Negotiated Rulemaking session.

FCAS and Need Work Groups Review

FCAS Work Group

The FCAS work group chair stated that they have nine items on their overall list of issues, and described their progress on each of these items.

Needs Work Group

The Needs work group looked at the Technical Assistance (TA) request on Census challenges. Then the work group divided into two sub-groups. One sub-group drafted a potential rule to mitigate the impact of the introduction of new data on tribes. The other sub-group focused on developing a framework for the data source study group – who will participate, where meetings will take place, cost, time frame, etc.

Jason Adams introduced a tribal leader from his region – Paul Ironcloud from Pine Ridge. Mr. Ironcloud addressed the committee. He said that he is scared that HUD will use ACS and that his Tribe will lose money, and thanked the committee for doing a study to look at a new data source.

The full committee broke into work groups at 9:30 am. At 5:00 pm, the group reconvened as a full committee.

Reports from Work Groups to the Committee

FCAS Work Group

The FCAS work group chair described their progress on each of the nine items they are addressing:

- Item #1: Demolition language. Draft on demolition language is ready for review by the full committee.

- Item #2: Local area cost adjustments. The work group submitted a TA request based on the 2008 Operating Cost Study, which recommends adding a United States Department of Agriculture (USDA) 515 local area cost adjustment factor. Since the TA request probably won't be ready for the Scottsdale session, they put in a TA request for a summary of the Operating Cost study.
- Item #3: Mutual help conveyance. A sub-group is working on proposed language.
- Item #4: Regulation 1000.306c regarding Section 8 units. This language conflicts with section 502 of the 2000 amendments to the statute, and the statute governs, so they are proposing a technical correction to remove the 1000.306c language. They also are working on language about conversion of units.
- Item #5: Tribes with low or no need that are receiving FCAS funding. They determined that the 1996 hold harmless language prevents them from coming up with new regulatory language.
- Item #6: Time limit on grantee expenditures. They are waiting for a TA request on LOCCS balances that needs to go through the Freedom of Information Act (FOIA). They have passed some language on to the drafting committee.
- Item #7: Section 302c of the statute – other areas where they can add factors. The work group brought up possible additional factors, including geographic distribution and infrastructure. They made a TA request for Bureau of Indian Affairs (BIA) roads data and Indian Health Service (IHS) water and sewer data.
- Item #8: HUD process and practices that conflict with how the program is run. They reviewed all of the HUD guidances and notices, the Indian Housing Plan (IHP), the Annual Performance Report (APR) and the Formula Response Form (FRF) and found no conflicts with practice. This issue has been studied and closed.
- Item #9: NAHASDA-assisted units. The work group had a spirited discussion of this issue, including how to define a NAHASDA-assisted unit. They made a TA request for preamble language from previous negotiated rulemaking sessions that addressed this issue. The issue is still under consideration.

Needs Work Group

The Needs work group selected two new co-chairs, Gary Cooper and Jack Sawyers.

The Needs work group worked on creating a sub-group to discuss issues related to data source selection. They want to establish parameters for this sub-group. They discussed the proposed change to 24 CFR 1000.330 – data source, study group, volatility factor – and are implementing language for the concept that the full committee agreed to.

Public Comment

There was no public comment.

The meeting ended with a closing prayer.

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

**Session 5
July 30, 2014**

The meeting started with an opening prayer.

Summary of Day 1 and Plan for Day 2

Today, the Needs work group will have a presentation on overlapping Formula Areas, and the FCAS work group will work on the remaining items on their list. Later this afternoon, the Needs work group will get out a report to the full about their meeting last night. The regions will caucus immediately after lunch today.

Reports from Work Groups

FCAS Work Group

Staff prepared a table listing each item the FCAS work group is addressing, how they addressed it and the current status of the item. The FCAS work group reviewed and modified this table.

The FCAS work group spent the majority of the day discussing the time limit on grant expenditures. The Freedom of Information Act (FOIA) sent the work group the LOCCS data through January 5, 2014. The drafting committee developed a series of bullet points on this issue, and the work group discussed each of the bullet points at length.

Needs Work Group

The Needs work group started the day with a presentation on overlapping formula areas. They had a very informative discussion of this issue and received a several page handout. The Needs work group then discussed several issues related to the proposal concept that was passed by the full committee at the last Negotiated Rulemaking session. First, they discussed forming a study group to look at available data sources. Last night a sub-group developed a document, and they presented it to the Needs work group today. They came to an agreement on this document and will get it out to the full committee shortly. It identifies the study group guiding principles.

The study group will consist of one committee member from each region, selected by a regional caucus, and a HUD representative. Anyone who wants to can participate in the study group, but only committee members will be allowed to vote. The first study group meeting will occur no more than two weeks from now, and possibly sooner. HUD only can commit their staff to support the study group through the end of this fiscal year,

September 30, 2014. The study group will provide quarterly status reports to the full committee, and will prepare a draft report for the full committee within 12 months of their first meeting. Further, once a product is produced it will be summarized and put into easily understandable and distributable format for tribes, TDHE's, the public, etc. The study group wants the full committee to have time to review their work before they come back together to address the issue.

The Negotiated Rulemaking committee asked the Needs work group to draft language for the concept paper. They will make minor changes to produce a final concept paper for approval or, if necessary, a majority and minority paper.

Agenda for July 31, 2014

The co-chair asked if either work group is bringing back proposals for the approval of the full committee. The Needs work group will have language to bring to the full committee in preparation for next month's Negotiated Rulemaking session, but they will not bring a proposal forward for full committee approval. The FCAS work group chair would like to bring a package with all completed work products to the Scottsdale Negotiated Rulemaking session. Alternatively, he may present some completed work at this session to show that they have had some success.

The committee amended tomorrow's agenda so that the full committee meets at 8:30 am and then breaks into work groups. The full committee will reconvene at 5 pm for public comment and closing. The full day will be spent in work groups. The agenda as revised was passed.

A work group member asked for clarification about whether the full committee needs to approve the guiding principles document developed by the Needs work group. Another group member said that they need to determine more broadly what has to come back to the full committee for approval because he doesn't think that the guiding principles document needs to come back, only the regulatory language that goes with the concept, that is, dealing with the volatility factor and implementation of a data source. It was suggested that the Needs work group agreed that the guiding principles document would be brought to and approved by the full committee. The full committee will revisit this issue tomorrow morning.

This afternoon the committee members caucused so that each region could choose a representative for the study group. The representatives are as follows:

- Southern Plains – Gary Cooper
- Northwest– Karin Foster
- Alaska – Carol Gore
- Southwest – Deidre Flood

- Northern Plains -- Jason Adams
- Eastern Woodlands – Heather Cloud
- HUD – Glenda Green

Public Comment

There was no public comment.

The meeting ended with a closing prayer.

**U.S. Department of Housing and Urban Development (HUD)
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Welcome and Summary of Day 2 and Plan for Day 3

Roger Boyd, Deputy Assistant Secretary, addressed the time line for implementation of a study group and the study group's work. They will have held a total of eight sessions by the time this Negotiated Rulemaking process is completed. In addition to the upcoming session in August, they will have one Negotiated Rulemaking session that is predicated on the outcome of the study group's efforts, and another after public comments on the outcome of the study. So the committee has a very limited amount of time to complete their work; it needs to be done by the end of next month's session.

The chair of the FCAS work group said that his group has two issues that cannot be addressed until they receive information from other agencies, and that they won't have this information by the Scottsdale session. Roger Boyd and Jemine Bryon, Acting Assistant Secretary, said that HUD will do what they can to expedite the receipt of the requested information. However, Ms. Bryon asked the work group to proceed as if the next session is their last opportunity to bring proposals to the table.

The preamble is intended to capture the spirit of the negotiations in addition to the actual actions, and it is a major document. The drafting committee will do as much preamble work as possible before the Scottsdale session. If all negotiations occur in Scottsdale, they need to develop a preamble between the sixth and seventh Negotiated Rulemaking sessions, which means that at the seventh session the full committee will need to look at the preamble in addition to the outcome of the study group.

A committee co-chair wants to bring the "low hanging fruit" to the table for negotiation in order to take advantage of the time they have to negotiate in this session. This afternoon they are allotting two hours from 3-5 pm to discuss the issue coming from the Needs work group, but if they don't go to the two hour limit they can address the FCAS work group proposals.

Mr. Boyd said that the group can caucus at 1:30 pm and then return as a full committee at 2 pm and work until 6 pm. The full committee agreed to this agenda. The committee broke into work groups at 9:05 am. The study group met at 11:45 am.

FCAS and Needs Work Groups Review

Needs Work Group

The Needs work group co-chair said they want to bring subpart D, section 1000.330 proposed language forward for full committee consideration. They scheduled the first study group meeting, which will be held on August 11, 2014 at 11 am eastern time. It will be a teleconference and the information will be distributed to committee members and posted on the website. At this first meeting the study group will formulate an agenda.

FCAS Work Group

The FCAS work group went back over their list of issues and revisited item 6, unexpended funds. They had a good discussion about this issue, but it is not ready yet for negotiation. The FCAS work group is still working on five items on their list. They will revisit these items in Scottsdale.

Proposal Negotiation Process

A committee member asked if all of the items that come up for committee review should be labeled draft, and the response was "yes." The full committee discussed the process for reviewing proposals. They have two hours to discuss an issue and then ask for consensus. The time clock starts when an issue is introduced. If the committee agrees, the time frame can be extended.

Discussion of Needs Work Group's Proposal Concept

The clock on the discussion of the proposal concept started at 2:23 pm. The whole committee previously had approved this proposal concept in draft form.

Summary

A drafting committee member presented highlights of the proposal.

Section 1000.330:

- First, hold off changing from the decennial Census updated with Indian Health Service (HIS) data for FY 2015, FY 2016 and FY 2017.
- Second, establish a study group that has 12 months to analyze the data source issue and see if they can reach consensus on a new data source.
- Third, specify what happens if the study group cannot reach consensus on a new data source, namely, use the most recent available data from the U.S. Census Bureau.

Section 1000.331:

- When a new data source is selected – it doesn't matter which data source – the new data source likely will result in changes in allocation of funds under the formula. The hold harmless provision is an agreement to ensure that changes are phased in over time so that for each year the impact on affected tribes – tribes which lose money -- will only be a maximum 10 percent reduction in funding. This determination will be based on the impact of the new data source, not on total loss, so it will not include loss of funds from other factors.

Appendix A to Part 1000:

- The money to mitigate the losses described in Section 1000.331 above will come proportionally from tribes that gain money from the use of the new data source.

The facilitator walked the full committee through the proposal, paragraph by paragraph, and asked for questions and comments. After the discussion, the proposal as presented was approved by consensus.

Discussion of FCAS Work Group's Proposals

Proposal 1: 1000.318 review of subpart D regulations and statutory changes – demolition and rebuilding of units

The FCAS work group proposed new section Part (d) (1) and (2). They expanded the statutory language to say that (1) if a recipient certifies that they started rebuilding a demolished unit within one year of when it is demolished and (2) rebuild the unit within 4 years of the date demolition is complete, then the unit remains eligible during the period it was not available for use.

Committee members asked a number of questions about the proposed new section, including why they increased the time frame for rebuilding a demolished unit from one to four years, how they define "demolished" and "completed," and the distinction between demolition and substantial reconstruction. The FCAS work group said they focused on what happens after demolition, and, based on tribes' experiences, particularly when they had to find a new site to rebuilt units, they felt that a one year time period is too restrictive to get a unit back in use.

HUD asked for some time to prepare alternative language. The group agreed to table this issue and hold the clock with 1 hour 8 minutes and 55 seconds remaining.

Proposal 2: 1000.306 How can the IHBG formula be modified?

The statutory change at section 502, made in 2000, basically says that Section 8 units continue to live on forever. This conflicts with 1000.306c, which says that Section 8

units shall be reduced by the same percentage as the current assisted rental stock. By consensus, the committee approved removing 1000.306c.

Proposal 3: 1000.316 How is the Formula Current Assisted Stock Component (FCAS) Developed?

The FCAS work group added a new subsection (c) regarding conversion. Committee members discussed this proposal at length, asking a number of questions about the extent to which units can be moved from Low Rent (LR) to home ownership and vice versa, the effect of conversion on families living in home ownership units and how converted units would be funded. The facilitator took the committee through the language section by section, and committee members made several friendly amendments. After one failed vote, the proposal passed by consensus.

Continuation of Discussion of Proposal 1: 1000.318

The group returned to its discussion of 1000.318. They restarted the clock with 1 hour 8 minutes and 55 seconds left on the clock. HUD proposed replacing (d) (1) and (d) (2) with new language. HUD's concern is that the clock has to start early and start on a definitive date, at the point the unit becomes uninhabitable or unavailable for occupancy. They are willing to agree to the four-year rebuild period. The FCAS work group chair did not accept HUD's revision. He said that tribes did not want repayment of funds. Ms. Bryon stressed that the repayment provision is intended to incentivize tribes to get units back in use, not to penalize tribes. The FCAS work group chair said that tribes should have four years to rebuild and, if they don't complete rebuilding, the unit is no longer eligible but there will be no repayment of allocated funds. HUD responded that this proposal is more generous than current practice, which gives tribes only one year to rebuild a unit.

The FCAS work group chair called for a vote on the original proposal. A committee member proposed a friendly amendment, which was accepted by the work group chair. The vote on the proposal as modified did not get consensus – five committee members dissented. The chair of the FCAS work group then called for consensus on the original proposal and the only dissent was from the two HUD members. Mr. Boyd was asked to offer an alternative. He revised what HUD previously proposed to omit repayment of funds. The chair of the FCAS work group accepted HUD's proposal as revised. Several committee members expressed concerns about the proposed language, and suggested that they send the proposal back to the FCAS work group and get their input on the language. The FCAS work group chair asked them to stop the clock and put the proposal back up for a vote at the next session with 28 minutes remaining on the clock. Based on this request, they tabled the issue.

Public Comment

Scott George from Citizen Potawatomi Nation stated that communities need to address social issues, for example, drugs. He feels that his Tribe is losing its traditions and that they need to return to their traditional ways. Housing money is set aside for bricks and mortar, but Tribes have social issues. He wants the committee to consider that solving problems takes more than throwing money at them.

Next Negotiated Rulemaking Session

The next Negotiated Rulemaking session will be held on August 26-28 in Scottsdale Arizona.

Selection of Co-Chairs

The committee voted by consensus to keep the same two committee co-chairs.

Comments and Closing Remarks

The co-chairs thanked Gary Cooper and Susan Podziba for the good job they did with the Needs work groups. The committee members were given a given a summary of the work on formula area overlap. For the record, a committee member stated that Kathy King is ill and asked for words on her behalf. She said that Ms. King would want the words to be on the record.

Ms. Bryon stated that she admires everyone's passion for this effort and that she remains very committed to it. A co-chair said that committee members are very passionate about this work and that they serve some of the most impoverished communities in the nation. She appreciates everyone's efforts and all the work they got done.

The meeting ended with a closing prayer.