

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

**Session 6
August 26, 2014**

The meeting started with an opening prayer.

Welcome

Jemine Bryon, Acting Assistant Secretary for Public and Indian Housing, welcomed the group and thanked everyone for their work. She stated that the Negotiated Rulemaking committee will meet again in one year to go over the recommendations from the study group and hopefully reach consensus on a data source. Ms. Bryon wants the work groups to have as much time as they need today to complete their tasks so they can bring their proposals to the full committee.

The co-chairs welcomed everyone back and said that they hope for productive working group sessions and negotiations.

The co-chairs did a role call and determined that they have a quorum.

Committee Review and Approval of the Proposed Agenda

The committee approved the agenda by consensus vote.

Committee Review and Approval of the Minutes from Fifth Session: July 29-31, 2014

The committee approved the minutes from the fifth session of Negotiated Rulemaking by consensus.

FCAS and Need Work Groups Review

FCAS

The FCAS work group has a document listing the 10 items that the group is working on. Their document is available on the website. They are working on the five remaining items and will bring any proposals on these items back to the full committee later this session.

Needs

The three Needs sub-groups will meet for a half hour, and then they will go into the full Needs work group.

The co-chairs informed the full committee that HUD can create a one-pager for each tribe to show the effects of the introduction of new factors.

The committee broke into work groups. They will meet back as a full committee at 5:00 PM.

Reports from the Work Groups to the Committee

Needs

Needs has three work sub-groups that have been working since the last session: overlapping formula areas, minimum funding and data challenges. The overlapping formula area sub-group has two proposals regarding overlapping formula area that they will bring before the full committee. The data challenges sub-group has no recommended changes. The minimum funding sub-group may bring forward one or two proposals tomorrow. The full Needs work group is trying to make progress on issues related to variables, including: weighting factor, selection of variables, extent of poverty and economic distress, overcrowding, families versus households and housing shortage.

FCAS

The FCAS work group completed a lot of work today. They addressed the remaining issues in item 1, demolition and rebuilding, and are drafting language. They are close to reaching consensus on all areas of item 6, unexpended funds. For item 2, local cost adjustment, they plan to bring draft language to the full committee asking to add 515 data as a third factor along with AEL and FMR, and to give tribes the highest of the three factors. However, they will not ask for full committee approval of the language until after they see the data run. Finally, the group looked at new language for item 3, mutual help conveyance. They plan to have all of these proposals ready for the full committee sometime tomorrow. There are two more items on their list and they hope to get to them tomorrow as well, but they don't think these items will require a lot of work.

Public Comments

There were no public comments.

Agenda for Wednesday, August 27, 2014

Tomorrow, the full committee will meet at 8:30 AM to go to caucuses, and then meet in work groups. The committee was reminded that they need to leave sufficient time to meet as a full committee to negotiate all of the proposals that will be brought before them. The FCAS work group has three items, each of which will have a 2-hour time limit, and one item with 28 minutes left on the clock. They may have language on two more items but it is not likely. The Needs work group has two items, each of which will have a 2-hour time limit, and they potentially will have two more items. The co-chairs encouraged the work groups to be as efficient as possible and return as a full committee as soon as possible.

The meeting ended with a closing prayer.

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The meeting started with an opening prayer.

Welcome

The Needs work group chair reported that the study group's agenda is to: (1) compile a list of data sets that already exist; (2) develop a questionnaire with criteria for assessing data sets; (3) develop a scoring matrix for data sets; and (4) review and do final drafting/editing on a Federal Register notice to determine if there are additional data sets that they have missed.

The group broke into caucuses. After caucuses, they will break into work groups. After lunch, the group met as a full committee.

Negotiations on Proposals

Demolition and Rebuilding

There were 28 minutes remaining on the clock for this issue. The clock started after the FCAS work group chair summarized the major points of the proposal: tribes would notify HUD within 1 year that they have taken action to commence demolition and rebuilding of a unit, and 4 years to complete reconstruction of the unit. If reconstruction is not completed in 4 years, the unit will not be considered Formula Current Assisted Stock (FCAS), but HUD will not require repayment for funds allocated for the unit during the 4 years.

Roger Boyd, Deputy Assistant Secretary for Native American Programs, clarified that the timeline is tied back to when a unit is damaged or deteriorated, that is, the proposal refers to a total four year period and not a total five year period. The committee voted on the proposal and one dissenter was concerned about potential ambiguity. The proposal was modified to clarify that it is based on a total period of four years from when demolition or replacement becomes necessary. The proposal as revised passed by consensus.

Local Area Cost Adjustment

The FCAS work group proposed adding USDA 515 factor as a supplement to the AEL and FMR. The tribe would get the greatest of the AEL factor, FMR factor or USDA 515 factor. However, the work group does not want the full committee to vote on this proposal until after they see the 515 data. The FCAS work group chair stressed that

this is the only item they are asking the committee to defer until the next Negotiated Rulemaking session.

Mutual Help Conveyance

The FCAS work group presented a proposal defining timelines for MH conveyance. The main points were a three-month notification period to notify HUD after a unit becomes conveyance eligible and a two-year time limit to convey units after they reach conveyance eligibility. They also presented a minority opinion that opposes the 24 month limit. The committee discussed both the minority and majority positions and proposed alternatives to the majority proposal. The majority proposal did not pass by consensus. There was a lot of dissent. A dissenting committee member proposed removing all of the references to time. However, HUD said they want clear guidance about when the clock starts, and the revised proposal is not an improvement over current practice. There was a call for the question on the revised proposal and it failed to achieve consensus.

The next revision proposed changing the time frame from three to six months for notifying HUD. The question was called on the proposal as revised and it failed. HUD proposed returning to the original proposal as presented by the FCAS work group, and setting a time limit of no more than three years. They called the question on this proposal and there was one dissenting vote. The dissenting committee member wasn't convinced that three years is sufficient time to convey units after they reach DOFA + 25. Her alternative proposal was to keep the regulation as it is and not revise it. A proposal to delete any time limit for funding home ownership units, but which gave tribes three months to notify HUD and develop a three-year action plan, also was defeated because of concern about referencing a three year time period.

The committee agreed by consensus to table this discussion and return to it later. There was 1 hour and 15 minutes left on the clock.

Undisbursed Funds

The FCAS work group presented a proposal stating that, beginning in FY 2018, tribes with an initial allocation of \$5 million or more with undisbursed funds in an amount greater than 3 times their initial allocation would receive a reduced IHBG grant. There was a recommendation that the implementation date be moved up to FY 2017, but the FCAS work group believes the proposed change realistically couldn't be implemented before FY 2018. The chair of the FCAS work group accepted several friendly amendments.

Some committee members were concerned that if they save up funds for future use, or get a "windfall" in any year, it might result in their amassing more than three years' worth of unexpended funds. To address these concerns, HUD proposed substituting "an amount that is greater than the sum of the prior 3 years' initial allocation calculation"

for “greater than 3 times.” HUD stated that there is a built-in administrative appeal process for tribes that object to this factor applying to them.

The proposer called the question on the proposal with the three friendly amendments. One committee member dissented because she feels that she needs to consult with tribal governments in her region because this issue is the subject of current legislation. Her alternative proposal is to postpone the vote until next August when the Negotiated Rulemaking Committee reconvenes to discuss the outcome of the study group’s work. They called the vote on this alternative proposal and everyone else dissented. Committee members stressed the importance of addressing the issue of unexpended funds in this Negotiated Rulemaking session. The issue was tabled until the next day with 22 minutes left on the clock.

Overlapping formula area: technical corrections

The question was called on the two proposed technical revisions. HUD dissented and proposed the following as a “better fix”: “Upon receipt of a request for expansion or redefinition of a tribe’s formula area, HUD shall follow the notice and comment procedures set forth in 1000.302 ‘Formula Area,’ paragraph 2(ii).” Instead of making the two proposed changes, HUD wants to go directly to 1000.302 and in effect make both changes there. HUD sees this as a drafting issue, not a substantive issue. HUD stated that the original proposal and HUD’s proposal would work the same. Committee members disagreed with HUD’s position and were not comfortable with HUD’s proposal. An attorney reiterated that their intention is that when expansion will create overlap, the tribes affected by the overlap will have notice and can provide comment. The question was called on HUD’s revised proposal and everyone dissented except for HUD.

A committee member suggested a revision to HUD’s proposal: “Upon receiving a request for expansion or redefinition of a tribe’s formula area, if approving the request would create an overlap, HUD shall follow the notice and comment procedures set forth in 1000.302 “Formula Area,” paragraph 2(ii).” The proposal as revised passed by consensus.

Public Comment

Framon Weaver, Chief of the Mowa Band of Choctaw Indians, stated that they have tribal members suffering in intense heat in the summer and that he wants this situation to be fixed.

The co-chair thanked everyone for their hard work. They will meet as full committee tomorrow morning at 8:30 AM. 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 6
August 28, 2014**

The meeting started with an opening prayer. The co-chair thanked everyone for participating.

Negotiations on Proposals

Minimum Funding

This proposal would increase minimum funding for small tribes by using carryover funds from the previous year and/or repayment funds from the current fiscal year. Any remaining carryover funds would be allocated to the National American Indian Housing Council (NAIHC) “specifically to help tribes with capacity building.” The Needs work group also offered a minority opinion questioning whether providing additional funding for small tribes would fill an important need and be a good use of funds.

HUD proposed amending the proposal to omit sections (d) and (e) because HUD doesn’t support allowing recipients receiving minimum funding to use all of their annual expenditures of grant funds for administration and planning, and distributing IHBG funds to NAIHC probably is illegal. The chair of the Needs work group did not accept HUD’s amendment, but another Needs work group member said that he is willing to limit the proposal to proposing level of funding rather than also including how to use the funds. However, the Needs work group wants to go on record, perhaps in the preamble, of their intent to build capacity for small tribes. They want to ensure that the issues brought up in (d) and (e) will be brought forward to the next Negotiated Rulemaking session.

A committee member was concerned that the proposal funnels repayments to subsidize minimum needs tribes. He thinks that repayments should go back to all tribes in the formula. To overcome objections, a committee member proposed deleting formula repayments from the pool of money. The vote on the proposal with HUD’s revisions and omitting formula repayments did not pass by consensus.

HUD stated that the language as written is not implementable because it creates a circular problem with the formula, and asked for more time to develop alternative language that is implementable and that will accomplish the committee’s goal. The clock was stopped with 42 minutes left on this issue.

Overlapping Formula Area

In situations when a state recognized tribe’s formula area overlaps with the formula area of a federally recognized tribe, it was proposed that “the Federally recognized Indian

tribe receives the allocation for the formula area up to its population cap, and the State recognized tribe receives the balance of the overlapping area (if any) up to its population cap.” A representative of a state tribe asked for consensus in support of this proposal. This proposal passed by consensus as originally written.

Mutual Help Conveyance (revisited)

This proposal didn't pass when it was originally brought to the full committee because of concerns about the 24 month time limit on conveyance after DOFA + 25. HUD proposed a heightened standard for showing reasonable effort after 24 months -- the tribe must show evidence from a third party (e.g., court or state or federal agency) that a legal impediment continues and prevents conveyance beyond the 24 months. There is no time limit/cutoff for how long tribes can be funded for a unit if they continue to have a legal impediment.

The committee discussed how long tribes need after a unit becomes eligible for conveyance to create a written plan of action describing the legal impediments and the actions that have and will be taken to resolve them. Navajo and others advocated for having at least 6 months rather than 3 months to deal with trust land and legal impediments, while HUD believes that 3 months is sufficient time given that tribes should proactively prepare for conveyance well before units reach DOFA + 25. HUD stated that, in the spirit of compromise, they will agree to 4 months. They called the question with the revisions from HUD and a 4 month time frame for creating a written plan of action. The proposal as revised passed by consensus.

Undisbursed Funds (revisited)

HUD presented further proposed revisions to the undisbursed funds factor, cleaned up the language that addressed concerns about potential changes in allocation over time, and made consistent changes in other language. The major revision changed the factor to undisbursed funds that “exceed the sum of the previous 3 years.” Previously, the factor addressed “undisbursed IHBG funds in an amount that is greater than 3 times its initial allocation calculation.” They called the question on this proposal and reached consensus.

Minimum Funding (revisited)

HUD worked on language to fix the circular problem. The language is intended to:

- Establish minimum total grant funding, not minimum need funding
- Put aside money (approximately \$3 million) for tribes receiving less than \$75,000
- If in a given year they don't put aside enough money, tribes will get less funding
- If in a given year they put aside too much money, the unused funds will be carried forward to the next year's formula

HUD created new section 1000.329 to meet the goals stated above. To be eligible for the minimum funding bump, tribe must certify in their IHP the presence of any eligible

household at or below 80 percent of median income. A committee member was concerned that any remaining carryover amount go toward next year's allocation, rather than be distributed this year among all the tribes.

There was a request to add 10 minutes to the clock on this issue. After more discussion, there was a call for the question on 1000.329. It was approved by consensus.

Definition of Eligibility for Services funded with IHBG funds

A committee member presented a minority opinion proposing a revision to 1000.324 and 1000.330 regarding eligibility for services. Since this proposal didn't get consensus support in the Needs work group, it hadn't been brought forward to the full committee. A committee member asked that they pass this issue on to the definition sub-committee. However, there is no definition sub-committee and, now that all of the proposals have been negotiated and accepted, the only group that is still active is the study group. They called the question on this proposal, and most committee members dissented.

The full committee discussed the process and why this proposal was not brought forward to the full committee by the chair of the Needs work group. He stated that he asked to reserve time so that the full committee could hear and respond to this proposal. Some committee members asked that the record show that they want these issues considered when the study group does their work, but that they don't wish to spend full committee time on this proposal. The co-chair called a point of order for this issue. It was voted down, and the committee members who introduced it stated that they wanted an up or down vote on it and then wanted to end the discussion.

Other Business

There was a consensus vote in support of putting 515 on the agenda for next August session. There is now a study group section on the website.

Public Comment

Robert Gauthier of the Confederated Salish Kootenai Tribes of the Flathead Indian Reservation wants to remind HUD and the Negotiated Rulemaking committee that, by not making the distinction between self-proclaimed Indians and statutorily defined Indians, they are blurring the lines between race-based preferences and political preferences. Mr. Gauthier stated that the NAHASDA statute is clear that benefits under the act are limited to low income Indian families. The act also defines low income Indians and families. It does not allow self-identification to determine eligibility for services, yet HUD continues to allow tribes to claim self-professed Indians in their formula. To continue to ignore this component of the Act is to add to the confusion of racial versus political preference.

Selection of Co-Chairs

The full committee voted by consensus to keep the same co-chairs for the next meeting.

Next Steps

Two more meetings currently are scheduled. The full committee needs to have a proposed rule for the next to last meeting, which will take place next August. That meeting needs to produce a public rule. The final meeting will deal with public comments that have come in on the proposed rule. HUD expects that the rule will apply in FY 2018.

In developing the preamble to the proposed rule, committee members want two things which were omitted from the minimum needs proposal clearly stated for the record in the preamble: (1) the cap on administrative expenses for small tribes, and (2) the need to fund capacity building for small tribes. The drafting group has already started working on the preamble, and plans to do more work shortly, especially on the proposals that passed by consensus. They also will address proposals that didn't get consensus. After the draft is completed, the drafting group will ask for input from committee members. Issues that didn't reach the full committee but which were discussed extensively – for example, NAHASDA-assisted units – will be included in the preamble.

HUD stated that they will assist the study group as much as they can. HUD staff may be able to provide assistance, however HUD cannot commit to anything beyond the end of FY 2014.

Closing Remarks

Acting Deputy Secretary Jemine Bryon thanked everyone for their participation and stated that they made incredible progress. She looks forward to the work the study group will be undertaking over the next 12 months. She said that, when they return next year, it is their goal to be very productive when they discuss the results of the study group and the 515 data. She thanked everyone on behalf of HUD.

The session ended with a closing prayer.