

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

**Session 4
June 11, 2014**

The meeting started with an opening prayer.

Welcome

The committee co-chair called the roll and determined that there was a quorum. Assistant Secretary Sandra Henriquez welcomed the group and stated that this is her last Negotiated Rulemaking session. She introduced Jemine Bryon, who will serve as Acting Assistant Secretary until the President nominates and the Senate affirms a new Assistant Secretary. The co-chairs then welcomed the group.

Committee Review and Approval of Proposed Agenda

Committee members expressed concern about the poorest tribes losing money if HUD uses American Community Survey (ACS) data, and want to discuss alternative approaches. The United Native American Housing Association (UNAHA) proposed freezing the way that Needs are calculated for a period of time while they do research on data options. Ms. Henriquez thanked UNAHA for putting this issue on the table. She would like a full and frank discussion about proposals that people have developed.

FCAS and Need Work Groups Review

Needs Work Group

At the last session, the Needs work group looked at different data sources and listed the pros and cons of each, and made five technical assistance (TA) requests. The work group chair requested direction from the full committee.

FCAS Work Group

The FCAS work group developed proposed language for the regulation regarding rebuilding a demolished unit. They looked at FCAS factors and definitions, and discussed a 2008 study of local area cost factors that suggests adding another local adjustment factor. They then began a discussion about data challenge procedures.

Committee Review and Approval of minutes from third session: April 23-25, 2014

The committee reviewed and approved the minutes from the third Negotiated Rulemaking session.

Full Committee Discussion of UNAHA Proposal

The committee discussed the UNAHA proposal to freeze the Needs side of the formula for three years while a work group looks at data sets. After the committee addresses UNAHA's proposal, the Needs work group can move past the data set question and start working on other issues.

Committee members had an extensive discussion about the UNAHA proposal. A member of UNAHA said that the purpose of their proposal is to try really hard to come up with an alternative to using ACS. UNAHA wants HUD to commit to looking at data sources other than ACS. If the study group doesn't come up with a better alternative, they haven't lost anything – HUD can go back to using ACS data.

Throughout the lengthy discussion committee members generally expressed support for the proposal, but many also had concerns about both the process and the outcome. Some committee members want the study group to make a major effort to find a better data set because they do not believe that ACS accurately reflects the conditions in their tribe and/or region. Other think that the best approach is for tribes to work with census to improve and revamp the ACS survey and ACS data so it more accurately reflects the Needs in Indian country. Some committee members are open to both approaches: searching for a more accurate data set while improving ACS data in case no better alternative emerges.

Assistant Secretary Henriquez asked the committee why HUD shouldn't use ACS as a consistent data set, but change the weights and measures so they are more refined and more attuned to deliver the kind of hold harmless policies the committee wants. All other agencies that do business in Indian Country are migrating to using ACS data, and HUD should be in sync with other agencies. They could retool ACS to get hold harmless, rather than look for a different data set.

The committee discussed what a freeze would mean. A UNAHA member clarified that freezing Needs data means that they continue to use the current Needs criteria for the next three years. HUD would not start using the ACS data set.

HUD has flexibility in terms of what data set they use administratively, whether they use current data or incorporate ACS data. HUD cannot voluntarily choose not to implement or to ignore some of the regulations that are on the books now. HUD does not have the legal authority to freeze dollar amounts. However, if the proposal is to use current census data and not move to ACS data while they figure out which data set they want to use, HUD can do this under current law. In addition, HUD has the legal authority to

amend the regulations to institute hold harmless. If the Negotiated Rulemaking Committee came to consensus on a hold harmless provision, HUD would draft changes to the regulations to make this happen. It is feasible to implement a freeze that states that HUD continues to use census data for the next three years.

Other Business

Carol Gore is stepping down as the co-chair of the Needs work group because of illness in her family. She will continue to be a strong participant but will abdicate her co-chair responsibilities. The Negotiated Rulemaking Committee recognized Sammi Jo Difuntorum as the new Chair of NAIHC.

Hold Harmless

The Needs work group is looking at hold harmless possibilities and developing a proposal for hold harmless. Instead of hold harmless, HUD could continue calculating Needs using current practices rather than switching to ACS. HUD stated that it will not move unilaterally to implement ACS. HUD will respect the wishes of this group.

The Needs work group submitted a TA request for options on hold harmless for a period of three years. One of the options was the either/or approach for hold harmless, in which tribes would get the better of the grant amount using old (census) or new (ACS) data. In every option, HUD made the numbers fit within the total appropriation amount by taking money from tribes in proportion to their gain with the new data. This means that the big gain tribes proportionally compensate the big loser tribes. The four hold harmless options are: (1) "either or" option described above; (2) guarantee that tribe's grant is equal to 90 percent or more of its prior year grant; (3) guarantee that initial Needs allocation will be at least 80 percent of tribe's prior year grant; (4) uses actual poverty data from ACS. Tribes with 35 percent or greater poverty in either single or multi-race data are guaranteed that they will get 90 percent of their prior year's Needs allocation. Low poverty tribes get 70 percent of their Needs allocation. Hold harmless is stronger for high poverty than for other areas. None of these hold harmless options tweak ACS data; they are changes to the formula, not to ACS data. However, option 4 uses the ACS poverty rate, which is a new ACS variable. There wasn't much impact on helping regions that take big losses using ACS data until options 3 and 4.

More Full Committee Discussion of UNAHA Proposal

One member stressed that UNAHA should not go to Congress with proposals until the Negotiated Rulemaking Committee reaches consensus. A UNAHA member assured the group that UNAHA won't go to Congress with respect to specific issues until the committee reaches a negotiated agreement. UNAHA is showing good faith.

Assistant Secretary Henriquez reiterated that she prefers to deal with the issue of a data set by Negotiated Rulemaking Committee decision rather than by using ACS unilaterally. She wants the committee to move forward and get “as close to yes” as possible. HUD’s only agenda is to get a formula that uses what the committee negotiates.

Reports from the Work Groups to the Committee

FCAS Work Group

The FCAS work group revisited demolition language (1000.318, (d)(1) and (3), and gave unanimous final approval to the language, which is on the website. Then the work group discussed the Indian Housing Operating Cost Study and its recommendation to add a local cost adjustment factor, namely, United States Department of Agriculture (USDA) 515. The group made a TA request asking for (1) adding 515 to the other two cost adjustment factors (AEL and FMR); (2) looking at 515 alone; and (3) looking at 515 in concert with FMR (eliminating AEL). The FCAS work group also discussed conveyance of Mutual Help (MH) units so they can develop parameters for HUD on this issue. If this group doesn’t come up with direction, HUD will ask Congress for direction. They asked a sub-work group work on this issue and draft regulatory language, but they may delay implementation of any solution because of the potential impact.

Needs Work Group

The Needs work group had a robust conversation about delaying implementation of data changes, a hold harmless provision and a data set study group. The work group agreed to: “Delay implementation of the new data source for FY 2016-2017 allocation until completion of a study of all relevant data sources. At the conclusion of the study, HUD will convene a rulemaking committee to consider the study findings to consider alternate data sets.” The group will provide more information about their proposed resolution before asking for a vote from the full committee.

Public Comment

A member of Rosebud Sioux who holds several positions with the tribe is concerned that the ACS data for Rosebud is inaccurate --the population count is too low. Their grant was cut by more than \$700,000. Further, lowering their housing grant will cost them \$2 million for Federal highways. The Rosebud Sioux Tribe supports freezing the Needs data, and they want the committee to look at the needs of rural reservations.

Another member of the public wants HUD to tell them how the study would be funded, and if HUD can continue the formula as is with adjustments until FY 2017, or will that be a regulatory problem? HUD responded that they can implement the formula the same

APPROVED BY COMMITTEE

7/29/2014 9:00am

way it is currently implemented for several more years. However, since funding is subject to appropriations, they cannot predict what will happen. Further, unless there is specific appropriations language which has the force of law, there is no other pot of money for funding the study.

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 4
June 12, 2014**

The meeting started with an opening prayer.

Summary of Day 1 and Plan for Day 2

Yesterday, before the close of the meeting, the Needs work group put a proposal about data sources on the floor for the committee. The Needs work group explained that the proposal in question was a draft and not on the table for consideration at that time.

Roger Boyd, Deputy Assistant Secretary, addressed the committee. He encouraged the committee to clarify the mission of the work groups, in particular regarding the proposed study. He would like the conversation about the study to be expanded. The group needs to come to a good understanding of what the proposed “freeze” means and if it would impact formula distribution. The committee needs to clarify the depth of the study -- the goal, the desired outcome and the structure, which includes methodology, who conducts it, who pays for it, the timeframe, and how comprehensive the study will be. Is it regional or national? Is the study for members’ tribes, for tribes in their region, or all tribes? All of these decisions will have an impact. Committee members are not the only stakeholders in this process; the outcome will impact all 566 federally recognized tribes and five state tribes. The study needs to be transparent, conclusive and fair to all – small, medium and large tribes. For all of these reasons, Mr. Boyd wants the committee to give further guidance to the working group.

The committee discussed whether these decisions need to be made in the Needs work group or by the full committee. Committee members agree that they need direction, and that they can’t come up with a proposal until they clarify these questions. It was suggested that the questions be addressed by a sub-group of the Needs work group.

The committee talked about the role of the drafting committee. The committee would like the drafting committee to be active today in both work groups. A committee member said that the work group puts up parameters and has the drafting committee formulate them into regulatory language, which then comes back to the work group for approval. The drafting committee also works on the preamble.

Discussion of Proposed Study

The committee discussed the guiding principles of the proposed study. They need to clearly define parameters, goals, structure, methodology and desired outcomes.

The committee broke into work groups. The full committee reconvened at 4:30 pm.

Reports from the Work Groups to the Committee

FCAS Work Group

The FCAS discussed item 4, Section 8 units, and determined that 1998 HUD guidance 19 dealt specifically with conversion of units. Statutory language says that Section 8 units will continue to be counted, but regulatory language says that Section 8 stock will diminish along with other rental stock. They are drafting language to remove 306c because it conflicts with the regulation. This will be classified as a technical correction to the regulations because 2000 language permits section 8 units to remain eligible.

The work group then addressed conversion of units. The current HUD practice is that, if a tribe/TDHE converts a unit, the unit continues to get funded as the type of unit specified in the project's Annual Contributions Contract (ACC). The work group had a very lengthy discussion about this issue and did not find common ground for deviating from current practice. However, everyone agreed that, if lots of MH units are converted to LR and then funded as LR units, it would take a big bite out of Needs funding. The FCAS work group will recommend that the drafting committee takes HUD guidance language and put regulation behind the current practice.

The work group moved on to item 5, recipients of FCAS money that have no Needs. The statutory language says that a tribe/TDHE cannot get less FCAS funding than the minimum amount they received in 1996. The FCAS work group is putting in a TA request to learn the number of tribes with low/no need who get minimum FCAS funding because of the statutory requirement. The work group finished by discussing item 6, putting a time limitation on grantee expenditures. They talked about 2012 appropriations language that puts time limits on expenditure of funds for 2012, 2013 and 2014. They are looking at statutory language that addresses this.

Needs Work Group

The Needs work group started discussing challenge procedures. They submitted a TA request related to the number of challenges that have been submitted, the number that were successful, etc.

The Needs work group had a robust discussion about the proposal concept. At this time, they presented it to the full committee:

Delay implementation of any new data source for FY 16-17 allocation until completion of a study by a study group of this committee, not to exceed 12

months, of all relevant data sources. Commencing in FY 2018, the introduction of a new data source may not result in any Tribe receiving less than 90% of its prior Fiscal Year Needs portion of the grant; provided, however, that any Tribe is subject to any proportional reduction that all Tribes are subject to in the event of a shortfall in the total amount available for Needs. At the conclusion of the study, the current Negotiated Rulemaking Committee will review study findings to consider alternate data sources.

The study group, by consensus, will recommend to the current Negotiated Rulemaking Committee a Needs data source and method of introducing that data source which achieves an optimal balance of:

1. Recognition of actual Tribal needs
2. Equity among Tribes
3. Minimizing disruption of tribal housing programs
4. Recognition of tribal sovereignty, and
5. Practicality, including cost

The full committee agreed to caucus before they take a poll to decide if the concept moves forward. They will caucus after the full committee meeting ends tonight, and start the next day with a poll. All of the caucuses were given copies of the proposal so they could review it.

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 4 June 13, 2014

The meeting started with an opening prayer.

Welcome and Summary of Day 2 and Plan for Day 3

The committee ended yesterday's meeting looking at the concept proposal, and the caucuses met last night to discuss it.

Discussion of Concept Proposal

Proposal Concept from the Needs Work Group to Full Committee: Delay implementation of any new data source for FY 16-17 allocation until completion of a study by a study group of this committee, not to exceed 12 months, of all relevant data sources. Commencing in FY 2018, the introduction of a new data source may not result in any Tribe receiving less than 90% of its prior Fiscal Year Needs portion of the grant; provided, however, that any Tribe is subject to any proportional reduction that all Tribes are subject to in the event of a shortfall in the total amount available for Needs. At the conclusion of the study, the current Negotiated Rulemaking Committee will review study findings to consider alternate data sources.

The study group, by consensus, will recommend to the current Negotiated Rulemaking Committee a Needs data source and method of introducing that data source which achieves an optimal balance of:

6. Recognition of actual Tribal needs
7. Equity among Tribes
8. Minimizing disruption of tribal housing programs
9. Recognition of tribal sovereignty, and
10. Practicality, including cost

Committee members shared their views about the concept proposal. Everyone said they would support the proposal, although a number expressed concerns. Some members are in favor of the proposal because it will mitigate the impact of using American Community Survey (ACS) data on tribes that will lose funding. They want the study to look for other data sets. Several members stated that the study should definitely address how to improve ACS data. Many said that unity is important. Concerns about the concept proposal include how the study will be funded and lack of clear definition of the scope of work. One member said that the committee should focus on increasing the overall pie, rather than having tribes "fight over crumbs."

Ben Winters from HUD Policy Development and Research (PD&R) made a presentation about how “hold harmless” works. He prefers the term “volatility control” to hold harmless. He explained that each gaining tribe gives up a percentage of their gain in proportion to how much they gained – not in proportion to their funding – to the losers. The big gainers give up the greatest proportion of their gain. Volatility control only addresses funding allocated for the Needs portion; tribes are “giving up” a percentage of their gain based on the total amount allocated to Needs only, not from their total grant.

Following Mr. Winter’s presentation, committee members continued to share their views about the concept proposal. They discussed the composition of the study group: several feel it should be open to all interested Negotiated Rulemaking Committee members, while one member said that isn’t necessary as long as every region and HUD should be represented. The committee also discussed funding for the study. Since other agencies use information in the IHBG formula, one member said that other agencies than HUD should fund a portion of the cost. Assistant Secretary Henriquez stated that any unexpended FY 2014 dollars will be gone by the end of this FY (September 30), and there is no carryover. Further, it would be difficult to influence the FY 2015 appropriations language.

Friendly Amendments to the Concept Proposal

Several committee members offered friendly amendments to the concept proposal. They were incorporated into the final concept proposal, with the exception of the suggestion to add “overcrowding issues” to bullet 1. Committee members did not want to limit the scope of the study by listing one tribal need but not others, and there will be much more discussion of overcrowding if the concept is approved. In order to recognize the intent of the addition of “overcrowding,” a committee member suggested adding “achieving a true count” as bullet 6; after further discussion, this was modified to “**including but not limited to achieving an accurate count.**” The committee member was asked to withdraw his friendly amendment, which he did.

The committee voted on the final concept proposal and it passed (changes are in bold): Delay implementation of any new data source for FY 16-17 allocation until completion of a study by a study group of this committee, not to exceed 12 months, **of all relevant data sources, including ACS, and for each data source how it might be used or modified to be used as a data source for the IHBG.** Commencing in FY 2018, the introduction of a new data source may not result in any Tribe receiving less than 90% of its prior Fiscal Year Needs portion of the grant; provided, however, that any Tribe is subject to any proportional reduction that all Tribes are subject to in the event of a shortfall in the total amount available for Needs. At the conclusion of the study, the current Negotiated Rulemaking Committee will review study findings to consider alternate data sources.

The study group, by consensus, will recommend to the current Negotiated Rulemaking Committee a Needs data source and method of introducing that data source which achieves an optimal balance of:

1. Recognition of actual Tribal needs
2. Equity among Tribes
3. Minimizing disruption of tribal housing programs
4. Recognition of tribal sovereignty, and
5. Practicality, including cost

The committee broke into work groups and decided to bring items to the full committee before the end of the last session of Negotiated Rulemaking. The full committee reconvened at 3:00 pm.

Caucus

A tribal caucus was held.

Updates from Work Groups

FCAS Work Group

The work group revisited putting time limitations on expenditure of funds. HUD suggested that the work group focus on a way to incentivize tribes not to accrue large amounts of money over time by reducing their future IHBG allocations. 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 percentage 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 work group will revisit this issue at the next Negotiated Rulemaking Session.

The FCAS work group then addressed statutory section 302c as it pertains to FCAS funding (not overall funding) – other factors for consideration. The group discussed if there is a way to gauge administrative capacity, and whether they want to tie any IHBG money to administrative capacity. For example, HUD might do a one-time assessment of administrative capacity, and a tribe would get a bonus if they passed. The group also discussed whether tribes with less capacity should be “rewarded.”

Needs Work Group

The Needs work group discussed the concept proposal that the full committee approved this morning and the “volatility clause” – how it would be implemented with the 90 percent guarantee. After lunch, a drafting sub-group which worked on language for the

concept proposal; they will present a proposed regulation at the Denver Negotiated Rulemaking session. The other sub-group continued to discuss how they would implement the 90 percent guarantee. This sub-group discussed the composition of the study group -- which would include the Negotiated Rulemaking committee and the public -- and who would be able to vote.

More Discussion about the Proposed Study

A committee member reiterated that every committee member should be given the opportunity to participate in the study group. Another committee member said that they need more discussion about the cost of the study. Ms. Henriquez stated that HUD will look at funding options. Funding may be easier to get if the study group consists of members of the Negotiated Rulemaking committee, because there is funding for Negotiated Rulemaking. HUD stated that they need a rule for FY 2015 at the latest in order to get a final rule well before FY 2018. For this reason, HUD suggests that the one year study period start soon.

Other Business

FirstPic reviewed the logistics for the July and August Negotiated Rulemaking sessions. Session 5 will be held July 29-31 at the Sheraton in downtown Denver. Session 6 will be held August 26-28 at the Double Tree in Scottsdale.

A member of the public thanked Ms. Henriquez for her participation in the entire process. Ms. Henriquez thanked everyone for their support. A committee member thanked Assistant Secretary Henriquez and her staff for all of their good work. He proposed keeping the status quo in terms of co-chairs. All committee members voted in favor of keeping the same co-chairs; there were no objections.

The session ended with a closing prayer.