U.S. Department of Housing and Urban Development (HUD)

Indian Housing Block Grant (IHBG) Formula Negotiated Rulemaking Committee

May 26, 2016

Negotiated Rulemaking Teleconference

Welcome

Randy Akers, Acting Deputy Assistant Secretary for Native American Programs, facilitated the teleconference. Mr. Akers welcomed the group. He stated that they had a call with the Negotiated Rulemaking Committee co-chairs yesterday. He stated that this call is to update the Committee members on the status of the proposed rule, bring the Committee’s attention to certain issues that had arisen during the clearance process of the proposed rule, and talk about next steps. He also stated that they are excited to share with the Committee that we are relatively in good shape and that things are taking place to successfully conclude the Negotiated Rulemaking process.

Roll Call

The teleconference started with a roll call. Twelve tribal Committee members and two HUD staff were present for the teleconference.

**Tribal Committee Members:**

Jason Adams, Annette Bryan, Gary Cooper, Sami Jo Difuntorum, Jason Dollarhide, Deidre Flood, Karin Foster, Gabe Layman (alternate for Carol Gore), Teri Nutter, Sam Okakok, Jack Sawyers, and Patterson Joe (alternate for Aneva Yazzie).

**HUD:**

Randy Akers, Jemine Bryon

Twelve tribal Committee members were not present on the call: Heather Cloud, Pete Delgado, Earl Evans, Lafe Haugen, Richard Hill, Leon Jacobs, Diana Phair, Raymond Robles, Marty Shuravloff, Russell Sossamon, Michael Thom, and Sharon Vogel.

Status of the Proposed Rule

Jad Atallah, Office of General Counsel, gave a summary of the current status and an update since the last time the Committee met in January 2016. Since the last meeting in January, the language for the preamble and the regulations were ready to move forward through clearance through HUD and the Office of Management and Budget (OMB) clearance. Since January, the rules went through departmental clearance and through OMB clearance. Typically OMB clearance takes a minimum of 90 days; however, HUD was able to get an expedited OMB review process. There are a few changes made during this process that will be discussed today.

The proposed rule is expected to be published in the Federal Register on May 31st. The public will have 60 days to make comments to the proposed rule. HUD will provide the Committee members with an email with a link to Regulations.gov, where the proposed rule will be provided electronically. There is also a separate mail process available, but HUD encourages everyone to submit comments electronically. The public comments period begins on May 31st and will end on August 1st. Once the public comments period ends, HUD will take the public comments and summarize them for the Committee to review. Mr. Atallah said that the Committee should be mindful of the August 1st deadline.

Mr. Akers said that HUD is very happy with the progress of the expedited OMB process. He also said that as the proposed rule has gone through the clearance process, there are a couple of things that have arisen to share with the Committee as discussed below.

Presentation of Changes

Data Adjustment

Todd Richardson, Associate Deputy Assistant Secretary for Policy Development in HUD’s Office of Policy Development and Research (PD&R), explained the changes to data adjustments that have arisen during the clearance process of the proposed rule. He stated that during the last Negotiated Rulemaking meeting, the Committee reached consensus on all but one proposed data adjustments. This non-consensus item was regarding the reweighing of ACS needs variable using the adjusted 2010 Census population variable. Mr. Richardson stated that the proposed rule will include this non-consensus data adjustment with a clear statement that it is a non-consensus item and that HUD is very interested in receiving comments regarding this data adjustment. HUD looks forward to reviewing comments for this non-consensus item with the Committee at the last Negotiated Rulemaking meeting.

Demolition of Formula Current Assisted Stock (FCAS)

Jad Atallah explained the changes to the demolition of FCAS regulation that have arisen during the clearance process of the proposed rule. He stated that there were 12 regulations that were developed and approved during the Negotiated Rulemaking process. One of the regulations that the Committee approved was regarding the demolition of FCAS units, which proposed that if FCAS unit is demolished and rebuilt within four years of demolition, the unit can stay on FCAS and the Tribe needs to provide information on the actions taken to get the unit rebuilt. Mr. Atallah explained that unfortunately, HUD’s Office of Inspector General (OIG) compared this demolition regulation to NAHASDA and they did not think that this regulation was consistent with NAHASDA. He stated that in order to get through departmental clearance this regulation was removed from the proposed rule. Instead, HUD added language in the preamble discussing what the Committee has proposed, why the regulation was removed from the proposed rule, and that HUD is asking the public and the Committee to go back to the drawing board and maybe come up with another regulation dealing with demolished units that will be consistent with NAHASDA. Mr. Atallah mentioned that when you provide comments in Regulations.gov, all comments are available to view for the public.

Other Edits

Jad Atallah also explained three minor changes to the proposed rule that were made during the clearance process. The first change was raised during the OMB clearance process, where they realized that the data used in the NAHASDA formula are also used in the U.S. Department of Transportation programs and state and local programs. OMB requested that HUD look at the impact of the formula data to other programs providing assistance to tribes. In order to get this through the OMB clearance process, a question was included in the preamble, requesting comments about what facts/data are used by other organizations and what impact the formula data change would have on their programs. The second change was a technical fix to the conversion regulation (24 CFR 1000.316). The rule was written to say if units were converted after October 1, 1997, the following applies.

HUD added the words “on or” so that the language reads “if units were converted *on or* after October 1, 1997.” The third change is regarding a regulatory impact statement. Mr. Atallah explained that when regulations involve money transfers, the OMB required that a regulatory impact statement be included when HUD publishes a regulation. This statement provides a breakdown on how allocation is impacted by this rule. The regulatory impact statement will be provided on regulations.gov as a separate document along with the Data Study Group Report.

Next Steps/Timeline

Jemine Bryon, General Deputy Assistant Secretary for Public and Indian Housing, discussed the next steps in the process and provided the following timeline:

* May 31st - August 1st: Public Comments period.
* Week of September 11th: Final Negotiated Rulemaking Session.
* August 26th: Posting the required notice of the last meeting on Federal Register.
* Proposing no later than September 2nd: Compiling all public comments and sending them out to Committee members.
* Final Rule by November 23rd with a 30-day effective period. If published by November 23rd, then the final rule will be effective by December 23, 2016.

Questions and Answers

Randy Akers asked if any of the Committee members had questions.

Sami Jo Difuntorum asked a question about the data adjustment. She wanted Todd Richardson to repeat the presentation of changes to the data adjustment in the proposed rule. Mr. Richardson explained the changes again.

Patterson Joe asked if the data adjustment change was made by HUD, not OMB. Mr. Akers stated that he believes so and encouraged everyone to make comments to the proposed rule.

Randy Akers also mentioned that HUD is trying to have the last Negotiated Rulemaking session the week of September 11th. He requested the Committee members to please look at their schedules and pencil in this timeframe. As soon as a date and location is confirmed, HUD will apprise the Committee members.

Gabe Layman stated that the week of September 11th is a subsistence/harvest season in rural Alaska. He requested that HUD push back the dates for the last session one week. Mr. Akers responded that HUD will definitely look into this and apprise the Committee members of any updates.

Closing Remarks

In closing, Mr. Akers acknowledged the leadership and the hard work of the Committee and stated that he wanted to make sure that the Committee is in the loop during this process. He also stated that he is looking forward to reconvening in the next few months to conclude the work of the Committee. He thanked everyone being on the call.

The co-chairs of the Negotiated Rulemaking Committee also made closing remarks. Annette Bryan thanked everyone for making time for the call and thanked the HUD stuff and expressed appreciation on the things accomplished in the timeline. She said that she looks forward to the final meeting.

Jason Dollarhide concurred with Annette and appreciated everyone being on the call. He asked about the location of the last meeting. Mr. Akers said that it is still in the preliminary stages of planning and no one location is locked in. He also said that as soon as possible, HUD will get the word out to the Committee on the date and location of the last Negotiated Rulemaking session.