

STUDY / SUBGROUP:

Need

TOPIC: Eligibility of State Tribes for funding

See attached 7/22/03 email from Marion McFadden
“Subject: Excluding State Tribes from IHBG Need funding”

CONSENSUS:

ACTIONS NEEDED:

1. Determining whether state Tribes are eligible for Need funding.
2. Can state Tribes be treated differently than Federal Tribes for purposes of the Formula Allocation?
3. Can state Tribes expand their Formula Areas?
4. Can state Tribes increase their population cap?
5. Can state Tribes serve non-member Indians?

STILL TO DO:

1. Have workgroup review HUD’s email regarding eligibility.
2. Examine relationship between statutory eligibility and Regulatory eligibility.
3. Request further clarification of HUD’s positions.

RATIONALE:

Widespread misconceptions over State tribes inclusion in the Formula.

OTHER AFFECTED PARTS:

OTHER:

Marion McFadden
07/22/2003 08:50 AM

To: Edward V. Fagan/PIH/HHQ/HUD@HUD
cc: Rodger J. Boyd/PIH/HHQ/HUD@HUD, Michael G. Gerber/PIH/HHQ/HUD@HUD, Deborah M. Lalancette/ONAP/DEN/HUD@HUD, Bruce A. Knott/ONAP/DEN/HUD@HUD, Randall R. Akers/ONAP/DEN/HUD@HUD, Jacqueline A. Kruszek/ONAP/DEN/HUD@HUD, ROBERT S. KENISON/OGC/HHQ/HUD@HUD
Subject: Excluding State Tribes from IHBG Need Funding

Ed,

At the last Denver session the question arose whether the formula could exclude State-recognized tribes from receiving funding based on need. Apparently there is a suggestion that State tribes should only receive FCAS funding.

As we discussed, section 4(12)(A) of the statute defines Indian tribe to include "a State recognized tribe"; section 4(12)(C) further defines State recognized tribe as a tribe that has been recognized as an Indian tribe by any state AND for which an IHA had a 1937 Act contract with HUD and received funding within 5 years prior before the date of enactment of NAHASDA (10/26/1996).

Section 302(b) of the Act requires that the formula "be based on factors that reflect the need of the Indian tribes and the Indian areas of the tribe for assistance for affordable housing activities," including FCAS and the extent of poverty and economic distress and the number of Indian families within Indian areas of the tribe. Section 302(c) further requires consideration of administrative capacity and "the extent to which terminations of assistance under title V [i.e. the ineligibility of tribes to receive 1937 Act funding, HOME, Youthbuild, McKinney-Vento Homeless Assistance, etc.] will affect funding available to State recognized tribes."

Bob Kenison and I agree that NAHASDA envisions both FCAS and Need funding for State tribes. Since the statute does not distinguish between State- and Federally-recognized tribes in its requirement that the formula be based on factors reflecting need, there does not appear to be any authority to zero out Need funding for eligible State tribes. It might be possible for the Committee to come up with factors assigning different weight to factors that affect State tribes differently than they affect other tribes, but these factors must be created with some rational, principled basis.

Please give me a call if you want to discuss further. If you want me to send a note to the tribes conveying this message prior to the next session, let me know. I recall that Earl and Darlene Tooley were asking--was there anyone else?

Marion