



December 18, 1998

TO: All Tribal Government Leaders and Tribally Designated Housing Entities (TDHE)

FROM: Jacqueline Johnson, Acting Deputy Assistant Secretary, 8APIN

TOPIC: Reviewing Formula Current Assisted Stock (FCAS) as listed on a tribe's Formula Response Form

SUBJECT: Regulatory requirements regarding FCAS as listed on a tribe's Formula Response Form

PURPOSE: This guidance highlights the regulatory requirements that tribes, TDHEs, and HUD must consider when reviewing the FCAS section of a tribe's Formula Response Form. In addition, this guidance specifies what procedures tribes, TDHEs, and HUD must follow if a discrepancy is noted when reviewing a tribe's Formula Response Form.

What is FCAS?

According to 24 CFR 1000.314, FCAS is housing units owned or operated pursuant to an Annual Contributions Contract(ACC) including all Low-Rent, Mutual Help, and Turnkey III housing units under management as of September 30, 1997, plus units in the pipeline when they become owned or operated by the recipient and are under management as indicated in the Formula Response Form. FCAS also includes Section 8 units when their current contract expires and the Indian tribe continues to manage the assistance in a manner similar to the Section 8 program, as reported on the Formula Response Form.

When are units no longer considered FCAS?

According to 24 CFR 1000.318, units under FCAS cease to be counted or expire from the inventory used for the formula when the Indian tribe, TDHE, or IHA no longer has the legal right to own, operate, or maintain the unit, whether such right is lost by conveyance, demolition, or otherwise provided that conveyance of each Mutual Help or Turnkey III unit occurs as soon as practicable after a unit becomes eligible for conveyance by the terms of the Mutual Help Occupancy Agreement (MHOA), and, the Indian tribe, TDHE, or IHA actively enforce strict compliance by the homebuyer with the terms and condition of the MHOA, including the requirements for full and timely payment. Rental units shall continue to be included for formula purposes as long as they continue to be operated as low income rental units by the Indian tribe, TDHE, or IHA. Expired contract Section 8 units shall continue as rental units and be included in the formula as long as they are operated as low income rental units as included in the Indian tribe's or TDHE's Formula Response Form.

How are converted units counted under FCAS?

If units were converted prior to October 1, 1997, as evidenced by an amended ACC, then those units will be counted as the type of unit to which they were converted for formula purposes. If units were converted on or after October 1, 1997, then those units will be counted as the type of unit specified on the original ACC for formula purposes.

What corrections should a tribe/TDHE report when reviewing their tribe's Formula Response

Form?

A tribe/TDHE shall review the FCAS section of their tribe's Formula Response Form for accuracy. The tribe/TDHE shall report corrections to unit counts, unit types, and actual or expected Dates of Full Availability. The tribe/TDHE shall not include units that have been conveyed, demolished, or otherwise lost in a year prior to the fiscal year that the Formula Response Form reports. The tribe/TDHE shall not include units that have been paid-off but not conveyed unless the tribe/TDHE can demonstrate that reasons beyond the tribe/TDHE or IHA's control have not made conveyance practical. The tribe/TDHE or IHA must demonstrate that the tribe/TDHE or IHA has actively enforced strict compliance by the homebuyers with the terms and conditions of the MHOA, including the requirements for full and timely payment. Because promissory notes can be issued, Tenant account receivables alone are not adequate for non-conveyance.

What if HUD discovers that a tribe/TDHE received formula funds for FCAS units they did not have in management during that time period?

If HUD discovers that a tribe/TDHE received formula funds for FCAS units that the tribe/TDHE did not have in management during that fiscal year, HUD will:

- Notify the tribe/TDHE of this information.**
- Inform the tribe/TDHE that HUD will recoup these funds by adjusting the upcoming fiscal year's grant.**
- Provide the tribe/TDHE with the opportunity to present additional information regarding the status of the units for HUD's consideration.**
- Distribute any recouped funds through the formula mechanism in the upcoming fiscal year.**

Cases where this might arise include Mutual Help/Turnkey III units that have conveyed or are eligible for conveyance and the tribe/TDHE or IHA cannot show sufficient evidence demonstrating that reasons beyond the tribe/TDHE or IHA's control have made conveyance not practical; units that have been sold or demolished; and, actual DOFA dates that differ expected DOFA dates.

Who should I contact if I have additional questions?

If you have any questions about reviewing FCAS as it appears on your tribe's/TDHEs Formula Response Form, please contact the appropriate staff in your Area Office of Native American Programs.