

(2) Beginning fiscal year 2018, the data source used to determine the variables described in paragraphs (a) through (f) of §1000.324 shall initially be the American Community Survey (ACS) 5-year Estimates.

(c) Indian tribes may challenge the data described in this section pursuant to §1000.336.

[81 FR 83681, Nov. 22, 2016]

§ 1000.331 How will the impacts from adoption of a new data source be minimized as the new data source is implemented?

(a) To minimize the impact of funding changes based on the introduction of a new data source under §1000.330, in fiscal year 2018 and each year thereafter, if, solely as a direct result of the introduction of a new data source, an Indian tribe's allocation under the need component of the formula is less than 90 percent of the amount it received under the need component in the immediate previous fiscal year, the Indian tribe's need allocation shall be adjusted up to an amount equal to 90 percent of the previous year's need allocation.

(b) Nothing in this section shall impact other adjustments under this part, including minimum funding, census challenges, formula area changes, or an increase in the total amount of funds available under the need component.

(c) In the event of a decrease in the total amount of funds available under the need component, an Indian tribe's adjusted allocation under paragraph (a) of this section shall be reduced by an amount proportionate to the reduced amount available for distribution under the need component of the formula.

(d) Adjustments under paragraph (b) or (c) of this section shall be made to a tribe's need allocation after adjusting that allocation under paragraph (a) of this section.

[81 FR 83681, Nov. 22, 2016]

§ 1000.332 Will data used by HUD to determine an Indian tribe's or TDHE's formula allocation be provided to the Indian tribe or TDHE before the allocation?

Yes. HUD shall provide the Indian tribe or TDHE notice of the data to be

used for the formula and projected allocation amount by June 1.

[77 FR 71528, Dec. 3, 2012]

§ 1000.334 May Indian tribes, TDHEs, or HUD challenge the data from the U.S. Decennial Census or provide an alternative source of data?

Yes. Provided that the data are gathered, evaluated, and presented in a manner acceptable to HUD and that the standards for acceptability are consistently applied throughout the Country.

§ 1000.336 How may an Indian tribe, TDHE, or HUD challenge data or appeal HUD formula determinations?

(a) An Indian tribe, TDHE, or HUD may challenge data used in the IHBG Formula and HUD formula determinations regarding:

- (1) U.S. Census data;
- (2) Tribal enrollment;
- (3) Formula area;
- (4) Formula Current Assisted Stock (FCAS);
- (5) Total Development Cost (TDC);
- (6) Fair Market Rents (FMRs);
- (7) Indian Health Service projections based upon birth and death rate data provided by the National Center for Health Statistics; and
- (8) The undisbursed funds factor.

(b) An Indian tribe or TDHE may not challenge data or HUD formula determinations regarding Allowable Expense Level (AEL) and the inflation factor.

(c) The challenge and the collection of data and the appeal of HUD formula determinations is an allowable cost for IHBG funds.

(d) An Indian tribe or TDHE that seeks to appeal data or a HUD formula determination, and has data in its possession that are acceptable to HUD, shall submit the challenge or appeal in writing with data and proper documentation to HUD. An Indian tribe or TDHE may appeal the undisbursed funds factor no later than 30 days after the receipt of the formula determination. Data used to challenge data contained in the U.S. Census must meet the requirements described in §1000.330(a). Further, in order for a census challenge to be considered for the