

(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

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upcoming fiscal year allocation, documentation must be submitted by March 30th.

(e) HUD shall respond to all challenges or appeals no later than 45 days after receipt and either approve or deny the appeal in writing, setting forth the reasons for its decision.

(1) If HUD challenges the validity of the submitted data HUD and the Indian tribe or TDHE shall attempt in good faith to resolve any discrepancies so that such data may be included in the formula allocation.

(2) If HUD denies a challenge or appeal, the Indian tribe or TDHE may request reconsideration of HUD's denial within 30 calendar days of receipt of HUD's denial. The request shall be in writing and set forth justification for reconsideration.

(3) HUD shall in writing affirm or deny the Indian tribe's or TDHE's request for reconsideration, setting forth HUD's reasons for the decision, within 20 calendar days of receiving the request. HUD's denial of a request for reconsideration shall constitute final agency action.

(4) If HUD approves the Indian tribe or TDHE's appeal, HUD will adjust to the Indian tribe's or TDHE's subsequent fiscal year allocation to include only the disputed fiscal year(s).

(f) In the event HUD questions whether the data contained in the formula accurately represents the Indian tribe's need, HUD shall request the Indian tribe to submit supporting documentation to justify the data and, if applicable, to provide a commitment to serve the population indicated in the geographic area.

[72 FR 20025, Apr. 20, 2007, as amended at 81 FR 83681, Nov. 22, 2016]

§ 1000.340 What if an Indian tribe is allocated less funding under the IHBG Formula than it received in Fiscal Year (FY) 1996 for operating subsidy and modernization?

(a) If an Indian tribe is allocated less funding under the modernization allocation of the formula pursuant to § 1000.316(b)(2) than the calculation of the number of Low Rent, Mutual Help, and Turnkey III FCAS units multiplied by the national per-unit amount of allocation for FY 1996 modernization

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multiplied by an adjustment factor for inflation, the Indian tribe's modernization allocation is calculated under § 1000.316(b)(1). The remaining grants are adjusted to keep the allocation within available appropriations.

(b) If an Indian tribe is allocated less funding under the formula than an IHA received on its behalf in FY 1996 for operating subsidy and modernization, its grant is increased to the amount received in FY 1996 for operating subsidy and modernization. The remaining grants are adjusted to keep the allocation within available appropriations.

[72 FR 20026, Apr. 20, 2007]

§ 1000.342 Are undisbursed IHBG funds a factor in the grant formula?

Yes, beginning fiscal year 2018. After calculating the initial allocation calculation for the current fiscal year by calculating FCAS, need, the 1996 Minimum, and repayments or additions for past over- or under-funding for each Indian tribe, the undisbursed funds factor shall be applied as follows:

(a) The undisbursed funds factor applies if an Indian tribe's initial allocation calculation is \$5 million or more and the Indian tribe has undisbursed IHBG funds in an amount that is greater than the sum of the prior 3 years' initial allocation calculations.

(b) If subject to paragraph (a) of this section, the Indian tribe's grant allocation shall be the greater of the initial allocation calculation minus the amount of undisbursed IHBG funds that exceed the sum of the prior 3 years' initial allocation calculations, or its 1996 Minimum.

(c) For purposes of this section, "undisbursed IHBG funds" means the amount of IHBG funds allocated to an Indian tribe in HUD's line of credit control system on October 1 of the fiscal year for which the allocation is made. For Indian tribes under an umbrella TDHE (a recipient that has been designated to receive grant amounts by more than one Indian tribe), if the Indian tribe's initial allocation calculation is \$5 million or more, its undisbursed IHBG funds is the amount calculated by multiplying the umbrella TDHE's total balance in HUD's line of credit control system on October 1 of the fiscal year for which the allocation