

Title 24: Housing and Urban Development
PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES
Subpart D—Allocation Formula

[add new paragraph (c) and re-letter subsequent paragraphs]

§1000.326 What if a formula area is served by more than one Indian tribe?

(a) If an Indian tribe's formula area overlaps with the formula area of one or more other Indian tribes, the funds allocated to that Indian tribe for the geographic area in which the formula areas overlap will be divided based on:

(1) The Indian tribe's proportional share of the population in the overlapping geographic area; and

(2) The Indian tribe's commitment to serve that proportional share of the population in such geographic area.

(3) In cases where a State recognized Indian tribe's formula area overlaps with a Federally recognized Indian tribe, the Federally recognized Indian tribe receives the allocation for the overlapping area.

(b) Tribal membership in the geographic area (not to include dually enrolled tribal members) will be based on data that all Indian tribes involved agree to use. Suggested data sources include tribal enrollment lists, the U.S. Census, Indian Health Service User Data, and Bureau of Indian Affairs data.

(c) Upon receiving a request for expansion or redefinition of a tribe's formula area, if approving the request would create an overlap, HUD shall follow the notice and comment procedures set forth in §1000.302 "Formula Area," paragraph 2(ii).

(d) If the Indian tribes involved cannot agree on what data source to use, HUD will make the decision on what data will be used to divide the funds between the Indian tribes by August 1.

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[add new paragraph (e) and re-letter subsequent paragraphs)

§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); and
- (7) Indian Health Service projections based upon birth and death rate data provided by the National Center for Health Statistics.

(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, may submit the data and proper documentation to HUD. 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 upcoming fiscal year allocation, documentation must be submitted by March 30th.

(e) Upon receiving a request for expansion or redefinition of a tribe's formula area, if approving the request would create an overlap, HUD shall follow the notice and comment procedures set forth in §1000.302 "Formula Area," paragraph 2(ii).

(f) HUD shall respond to all challenges or appeals not later than 45 days after receipt and either approve or deny the validity of such data or challenge to a HUD formula determination in writing, setting forth the reasons for its decision. Pursuant to HUD's action, the following shall apply:

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

(2) Should the Indian tribe or TDHE and HUD be unable to resolve any discrepancy within 30 calendar days of receipt of HUD's denial, the Indian tribe or TDHE may request reconsideration of HUD's denial in writing. The request shall set forth justification for reconsideration.

(3) Within 20 calendar days of receiving the request, HUD shall reconsider the Indian tribe or TDHE's submission and either affirm or reverse its initial decision in writing, setting forth HUD's reasons for the decision.

(4) Pursuant to resolution of the dispute:

(i) If the Indian tribe or TDHE prevails, an adjustment to the Indian tribe's or TDHE's subsequent allocation for the subsequent year shall be made retroactive to include only the disputed fiscal year(s); or

(ii) If HUD prevails, it shall issue a written decision denying the Indian tribe or TDHE's petition for reconsideration, which shall constitute final agency action.

(g) In the event HUD questions that the data contained in the formula does not accurately represent the Indian tribe's need, HUD shall request the Indian tribe to submit supporting documentation to justify the data and to provide a commitment to serve the population indicated in the geographic area.