

July 17, 2015

1 **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

2
3 **24 CFR Part 1000**

4
5 **[Docket No. FR-5650-P-11]**

6
7 **RIN 2577-AC90**

8
9 **Native American Housing Assistance and Self-Determination Act (NAHASDA);**
10 **Revisions to the Indian Housing Block Grant Program Formula**
11

12 **AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

13 **ACTION:** Proposed rule.

14 **SUMMARY:** This proposed rule would revise the Indian Housing Block Grant (IHBG)
15 Program allocation formula authorized by section 302 of the Native American Housing
16 Assistance and Self-Determination Act of 1996, as amended. Through the IHBG
17 Program, HUD provides federal housing assistance for Indian tribes in a manner that
18 recognizes the right of Indian self-determination and tribal self-government. HUD
19 negotiated the proposed rule with active tribal participation and using the procedures of
20 the Negotiated Rulemaking Act of 1990. The proposed regulatory changes reflect the
21 consensus decisions reached by HUD and the tribal representatives on ways to improve
22 and clarify the current regulations governing the IHBG Program formula.

23 **DATES:** Comment Due Date: **[Insert date 60 days from the date of publication in the**
24 **FEDERAL REGISTER**].

25 **ADDRESSES:** Interested persons are invited to submit comments regarding this
26 proposed rule to the Regulations Division, Office of General Counsel, Department of
27 Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC
28 20410-0500. Communications must refer to the above docket number and title. There

1 are two methods for submitting public comments. All submissions must refer to the
2 above docket number and title.

3 **1. Submission of Comments by Mail.** Comments may be submitted by mail to
4 the Regulations Division, Office of General Counsel, Department of Housing and Urban
5 Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

6 **2. Electronic Submission of Comments.** Interested persons may submit
7 comments electronically through the Federal eRulemaking Portal at
8 www.regulations.gov. HUD strongly encourages commenters to submit comments
9 electronically. Electronic submission of comments allows the commenter maximum time
10 to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to
11 make them immediately available to the public. Comments submitted electronically
12 through the www.regulations.gov website can be viewed by other commenters and
13 interested members of the public. Commenters should follow the instructions provided
14 on that site to submit comments electronically.

15 **Note:** To receive consideration as public comments, comments must be submitted
16 through one of the two methods specified above. Again, all submissions must refer to the
17 docket number and title of the rule.

18 *No Facsimile Comments.* Facsimile (fax) comments are not acceptable.

19 **Public Inspection of Public Comments.** HUD will make all properly submitted
20 comments and communications available for public inspection and copying between 8
21 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD
22 Headquarters building, you must schedule an appointment in advance to review the
23 public comments by calling the Regulations Division at 202-708-3055 (this is not a toll-

1 free number). Individuals with speech or hearing impairments may access this number
2 via TTY by calling the toll-free Federal Relay Service at 800-877-8339. Copies of all
3 comments submitted are available for inspection and downloading at
4 www.regulations.gov.

5 **FOR FURTHER INFORMATION CONTACT:** Rodger J. Boyd, Deputy Assistant
6 Secretary for Native American Programs, Office of Public and Indian Housing,
7 Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4126,
8 Washington, DC 20410-5000, telephone, (202) 401-7914 (this is not a toll-free number).
9 Hearing or speech-impaired individuals may access this number via TTY by calling the
10 toll-free Federal Relay Service at 1-800-877-8339.

11 **SUPPLEMENTARY INFORMATION:**

12 **I. Background**

13 The Native American Housing Assistance and Self-Determination Act of 1996
14 (25 U.S.C. 4101 et seq.) (NAHASDA) changed the way that housing assistance is
15 provided to Native Americans. NAHASDA eliminated several separate assistance
16 programs and replaced them with a single block grant program, known as the Indian
17 Housing Block Grant (IHBG) Program. NAHASDA and its implementing regulations,
18 codified at 24 CFR part 1000, recognize tribal self-determination and self-governance
19 while establishing reasonable standards of accountability. Reflective of this, section 106
20 of NAHASDA provides that HUD shall develop implementing regulations with active
21 tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990
22 (5 U.S.C. 561-570).

1 NAHASDA has been amended and reauthorized several times since being signed
2 into law in 1996. Following the enactment of the Native American Housing Assistance
3 and Self-Determination Reauthorization Act of 2008 (Public Law 110-411, approved
4 October 14, 2008) (NAHASDA Reauthorization Act) HUD established a negotiated
5 rulemaking committee on January 5, 2010 (75 FR 423) that focused on implementing the
6 NAHASDA Reauthorization Act and prior amendments to NAHASDA. The negotiated
7 rulemaking committee addressed all IHBG program regulations, except those provisions
8 which govern the NAHASDA allocation formula codified in subpart D of 24 CFR part
9 1000. As a result of that negotiated rulemaking, HUD published a final rule on
10 December 3, 2012 (77 FR 71513), that revised HUD regulations governing the IHBG
11 Program and the Title VI Loan Guarantee program (under Title VI of NAHASDA, 25
12 U.S.C. §§ 4191, *et seq.* A separate negotiated rulemaking was subsequently begun to
13 review the allocation formula regulations.

14 **II. The IHBG Formula Negotiated Rulemaking Committee**

15 On July 3, 2012 (77 FR 39452) and September 18, 2012 (77 FR 57544), HUD
16 published notices in the Federal Register announcing HUD's intent to establish a
17 negotiated rulemaking committee for the purposes of reviewing the regulations at 24 CFR
18 part 1000, subpart D, and negotiating recommendations for a possible proposed rule
19 modifying the IHBG formula. On June 12, 2013 (78 FR 35178), HUD published for
20 public comment the names and affiliations of the committee's proposed members. On
21 July 30, 2013 (78 FR 45903), after considering public comment on the proposed
22 membership, HUD published a Federal Register notice announcing the final list of
23 members of the IHBG Formula Negotiated Rulemaking Committee (Committee) and

1 announcing the dates of the first meeting of the Committee. The Committee membership
2 consists of 24 elected officers of tribal governments (or authorized designees of those
3 tribal governments). The Committee membership reflected a balanced representation of
4 Indian tribes, both geographically and based on size. In addition to the tribal members,
5 there were two HUD representatives on the Committee. Committee meetings took place
6 on August 27-28, 2013, September 17-19, 2013, April 23-24, 2014, June 11-13, 2014,
7 July 29-31, 2014, August, 26-28, 2014 and August 11-13, 2015. The Committee agreed
8 to operate based on consensus rulemaking and its approved charter and protocols. All of
9 the Committee meetings were announced in the Federal Register and were open to the
10 public.¹

11 The Committee divided itself into multiple workgroups to analyze specified
12 provisions of the IHBG formula and to draft any new or revised regulatory language it
13 believed was necessary. A workgroup was responsible for analyzing the regulations for
14 the Need component. Another workgroup reviewed the provisions governing the
15 Formula Current Assisted Stock (FCAS) component. The workgroups were not
16 authorized to reach any final or binding decisions but, rather, reported to the full
17 Committee. The draft regulatory language developed by the workgroups was then
18 brought before the full Committee for review, amendment, and approval. At the August
19 2014 meeting, an additional study group was established to assess alternative data
20 sources to the 2000 United States Decennial Census, which currently serves as the basis
21 for the various factors that are considered in determining need. The study group was
22 comprised of one Committee member from each of the six HUD designated ONAP

¹ See, 78 FR 45903 (July 30, 2013), 78 FR 54416 (September 4, 2013), 79 FR 14204 (March 13, 2014), 79 FR 28700 (May 23, 2014); 80 FR 30004 (May 26, 2015); 80 FR 33157 (June 11, 2015).

1 regions, plus one HUD representative. Meetings of the study group were open to all
2 Committee members and to the public. The study group met both telephonically and in
3 person and operated on a consensus basis. On July XX, 2015, the study group issued its
4 final report containing a recommendation for a data source or sources to be used in the
5 IHBG funding formula.

6 **III. This Proposed Rule**

7 The Committee undertook a comprehensive review of the IHBG Formula. The
8 committee also reviewed any statutory changes that still needed to be addressed in the
9 regulations. The Committee identified certain areas of the IHBG formula that required
10 clarification, were outdated, or could be improved. With the exception of changes to §
11 1000.302, this proposed rule reflects the consensus decisions reached by the Committee
12 during the negotiated rulemaking process on the best way to address these issues. The
13 following section of this preamble provides a summary of the recommended changes to
14 the IHBG formula by this proposed rule.

15 A. Revision of definition of formula area (§ 1000.302)

16 To conform § 1000.302, to the decision of the United States Court of Appeals for
17 the Tenth Circuit in United Keetoowah Band of Cherokee Indians of Oklahoma v. United
18 States Department of Housing and Urban Development², HUD is revising the definition
19 of formula area at 24 CFR § 1000.302 by striking the reference to “court jurisdiction” in
20 paragraph (2)(i) of the definition.

21 B. Continued funding of Section 8 Units (§ 1000.306)

22 The proposed rule would make a technical amendment to § 1000.306 to eliminate
23 paragraph (c), an outdated regulation that addressed how Section 8 units would be treated

² 567 F.3d 1235 (10th Cir. 2009).

1 under the formula. Currently, § 1000.306(c) provides that, during the five year review of
2 the FCAS component of the formula, the count of units associated with expired contracts
3 for tenant-based Section 8 rental assistance would be reduced by the same percentage as
4 the current assisted rental stock has diminished since September 30, 1999. After HUD
5 issued this regulation, section 502(a) of NAHASDA was amended by the Omnibus
6 Indian Advancement Act (Pub. L. 106-568) (25 U.S.C. 4181(a)) to provide that housing
7 that was subject to a contract for tenant-based Section 8 rental assistance prior to
8 September 30, 1997, under the authority of the United States Housing Act of 1937 (42
9 U.S.C. 1437 et seq.) will be considered a dwelling unit for purposes of section 302(b)(1)
10 of NAHASDA. As a result, the proposed rule removes paragraph (c) from § 1000.306.

11 C. Components of IHBG formula (§ 1000.310)

12 The proposed rule would revise § 1000.310 to reflect that the IHBG formula
13 consists of four components: FCAS (§ 1000.316), Need (§ 1000.324), 1996 Minimum (§
14 1000.340), and Undisbursed IHBG funds factor (§ 1000.342). FCAS, Need, and 1996
15 Minimum are existing components of the formula. The proposed addition of the
16 Undisbursed IHBG funds factor is discussed below.

17 D. Conversions of units from Low-Rent FCAS to Mutual Help or from Mutual Help to

18 Low-Rent FCAS (§ 1000.316)

19 This proposed rule would clarify the type and eligibility of low-income dwelling
20 units developed under the United States Housing Act of 1937 that are converted from
21 Low Rent to Mutual Help or from Mutual Help to Low Rent. The Committee proposed a
22 new paragraph (c) to codify HUD's existing practice and establish the following. Units
23 that were converted before NAHASDA's effective date of October 1, 1997, would count

1 in the formula as the type of unit to which they were converted, and their FCAS
2 eligibility would be evaluated on the basis of the type of unit to which they were
3 converted. The amount of per unit FCAS funding for units that were converted after
4 October 1, 1997, would be determined according to the unit's type specified in the
5 original Annual Contributions Contract (ACC), i.e. the ACC in effect on September 30,
6 1997, while their FCAS eligibility would be evaluated on the basis of the type to which
7 they were converted. Furthermore, the rule would require recipients to report
8 conversions on their Formula Response Form. The committee emphasized that the
9 decision to convert a unit was a local decision for the tribe or TDHE (tribally designated
10 housing entity) to make at its discretion.

11 E. Mutual Help unit conveyance (§ 1000.318(a))

12 This proposed rule would clarify in § 1000.318 the FCAS eligibility of Mutual
13 Help and Turnkey III units developed under the United States Housing Act of 1937 that
14 are not conveyed within 25 years from the Date of Full Availability (DOFA plus 25
15 years). The proposed rule would provide specific milestones for demonstrating FCAS
16 eligibility. Specifically, the proposed rule would provide that a unit may continue to be
17 considered FCAS when conveyance of the unit is prevented by a legal impediment, if the
18 tribe, TDHE, or Indian Housing Authority (IHA) has taken all other steps necessary to
19 effectuate the conveyance and has made and documented reasonable efforts to remove
20 the impediment. Mutual Help and Turnkey III units that are eligible for conveyance
21 under the terms of their Mutual Help and Occupancy Agreement (MHOA) but not
22 conveyed may continue to be considered FCAS if the delay in conveyance is caused by
23 reasons beyond the control of the tribe, TDHE, or IHA. Section 302(b)(1)(D) of

1 NAHASDA (25 U.S.C. § 4152(b)(1)(D)) provides that the term “reasons beyond the
2 control of a recipient” means, after the recipient makes “reasonable efforts” to resolve all
3 issues necessary for conveyance, the conveyance is still delayed because there remain
4 delays in obtaining or the absence of title status reports, incorrect or inadequate legal
5 descriptions or other legal documentation necessary for conveyance, clouds on title due
6 to probate or intestacy or other court proceedings, or any other legal impediment. Thus,
7 under this proposed rule, to demonstrate reasonable efforts, the Tribe, TDHE or IHA
8 would be required, no later than four months after the unit becomes eligible for
9 conveyance, to create a written plan of action that describes the impediment and the
10 actions it will take to resolve the impediment within 24 months after the date the unit
11 became eligible for conveyance. If the legal impediment remains after that 24-month
12 period, the unit will no longer be considered FCAS unless the tribe, TDHE, or IHA
13 provides evidence from a third party, such as a Federal, State, or tribal court, or State or
14 Federal agency, documenting that the impediment continues to prevent conveyance.
15 Proposed § 1000.318(a)(3) would address Mutual Help and Turnkey III units that, as of
16 the effective date of this regulation, have not been conveyed because timely conveyance
17 was demonstrably beyond the tribe’s control. These units will be considered to have
18 become eligible to convey on the effective date of this regulation, triggering the time
19 periods for creating a written plan of action to resolve the impediment and conveying the
20 units or providing the third party evidence of continued impediment within the 24-month
21 period. Section 1000.318(a)(3)(iv) applies to units that have not been conveyed due to
22 legal impediments, and will not apply to units that are eligible for conveyance before the
23 effective date of this regulation but have not been conveyed for other reasons.

1 F. Demolition and rebuilding of FCAS Units (§ 1000.318(d))

2 The proposed rule would add a new paragraph (d) to § 1000.318 to establish the
3 eligibility criteria for units that are demolished and rebuilt. Currently in accordance with
4 section 302(b)(1)(C) of NAHASDA, units that are demolished must be rebuilt within one
5 year in order to be counted in the formula. This rule proposes to interpret section
6 302(b)(1)(C) of NAHASDA and add a provision that would permit the unit to continue to
7 be considered FCAS, if the recipient certifies in writing within one year from the date
8 that the unit becomes damaged or deteriorated that it has taken tangible action to
9 demolish and rebuild the unit. In addition, the provision would require that
10 reconstruction of the unit be completed within four years of the point at which demolition
11 or replacement became necessary. At the end of the four year period, the unit would no
12 longer be considered FCAS unless the recipient notified HUD that the reconstruction of
13 the unit has been completed. If a recipient fails to rebuild a unit within the four year time
14 frame, the unit would nonetheless have been considered eligible as FCAS during those
15 four years. The proposed rule is intended to incentivize the reconstruction of properties
16 in a condition of such significant disrepair that they must be demolished and rebuilt in
17 order to preserve critical housing stock and ensure that housing remains available to
18 assist low-income Indian families in the future.

19 G. Overlapping formula areas

20 Section 1000.326 would be revised to require that HUD follow the notice and
21 comment procedures in the definition of “Formula Area” (§1000.302 paragraph 2(ii))
22 upon receiving a request for expansion or redefinition of a tribe’s formula area, if
23 approving the request would create an overlap of formula areas with one or more other

1 tribes. This proposed change is intended to ensure that tribes or tribes potentially
2 affected by the request be notified and have the opportunity comment on the request.

3 H. Minimum total grant allocation of carryover funds (§ 1000.329)

4 Section 1000.329 is proposed as a new provision of the Need component of the
5 IHBG formula. Section 1000.329 would provide for a minimum block grant allocation in
6 the event that amounts available for allocation include carryover funds. This section
7 would provide that allocations be adjusted to ensure all tribes a minimum block grant
8 allocation of 0.111547 percent of that year's IHBG appropriation. HUD and the
9 Committee estimated that based on current year appropriations, approximately \$3 million
10 would be required to ensure that tribes receive a minimum allocation of approximately
11 0.111547 percent of the annual IHBG appropriation (close to \$75,000, given historical
12 appropriated amounts). Therefore, HUD will set aside an amount equal to the lesser of
13 \$3 million of available carryover funds or the entire amount of available carryover funds
14 to increase allocations pursuant to this section. If set-aside carryover funds are
15 insufficient to fund all eligible tribes at 0.011547 percent of that year's appropriations,
16 the minimum total grant would be reduced to an amount which can be fully funded with
17 the available set-aside carryover funds. Set-aside carryover funds that are not required to
18 fund this additional allocation would be carried over to the subsequent year's formula. A
19 tribe would be eligible for a minimum allocation under § 1000.329 if there are eligible
20 households at or below 80 percent of median income in the tribe's formula area. For
21 purposes of this proposed rule, "carryover funds" are defined as any grant funds
22 voluntarily returned to the formula or not accepted by tribes in a fiscal year. The
23 definition of carryover funds does not include any amounts that are returned to the IHBG

1 formula voluntarily or involuntarily pursuant to § 1000.536, as a result of a HUD action
2 under § 1000.532. The Committee considered and rejected including such amounts in the
3 definition of carryover funds under this section.

4 I. Data sources for the Need variables (§ 1000.330)

5 **[To be drafted after Study Group Report is available to the Committee.]**

6 Section 1000.330(d) maintains the right of an Indian tribe to challenge the data described
7 in this section pursuant to § 1000.336.

8 J. Volatility control of changes in Need component of formula caused by introduction of
9 new data source (§ 1000.331)

10 Section 1000.331 would be added to minimize and phase-in funding changes to
11 allocations under the Need component of the formula resulting from the introduction of a
12 new data source under § 1000.330, beginning in fiscal year 2018 (the first year that a new
13 data source could be introduced). Under § 1000.331, if as a direct result of the
14 introduction of a new data source, an Indian tribe's allocation under the Need component
15 of the formula results in an allocation that is less than 90 percent of the amount it
16 received under the Need component in the immediate previous fiscal year, the Indian
17 tribe's Need allocation would be adjusted upward to an amount equal to 90 percent of the
18 previous year's Need allocation. As proposed, this volatility control provision would not
19 impact other adjustments under 24 CFR part 1000, including minimum funding, census
20 challenges, formula area changes, or an increase in the total amount of funds available
21 under the Need component. Section 1000.331 also proposes that in the event that HUD's
22 IHBG appropriation is reduced and results in a decrease in the total amount of funds
23 available under the Need component, an Indian tribe's adjusted allocation under §

1 1000.331(a) would be reduced by an amount proportionate to the reduced amount
2 available for distribution under the Need component of the formula. Adjustments to the
3 tribe's Need allocation under § 1000.331(b) or (c) would be made after adjustment of the
4 tribe's allocation under § 1000.331(a).

5 K. Data challenges and appeals of HUD formula determinations (§ 1000.336)

6 This rule proposes to revise § 1000.336 to provide that an Indian tribe, TDHE,
7 and HUD may challenge data used to determine the proposed undisbursed funds factor, §
8 1000.342. Specifically, this section would add the undisbursed funds factor to the list of
9 IHBG formula data and HUD formula determinations that Indian tribes and TDHEs may
10 appeal under the formula appeal procedures in §1000.336. As the undisbursed funds
11 factor is part of the formula for determining allocations, its application is not an
12 enforcement action (under 24 CFR part 1000, subpart F).

13 In addition, §1000.336(d) would be revised to clarify the format and provide the
14 timeframes by which the tribe or TDHE must submit its appeal of the undisbursed funds
15 factor. As proposed, this section would provide that the appeal must be in writing and
16 submitted to HUD no later than 30 days after the tribe's or TDHE's receipt of HUD's
17 application of the undisbursed funds factor.

18 This proposed rule also revises §§ 1000.336(e) and (f) for clarity. These revisions
19 do not substantively amend these provisions.

20 L. Undisbursed IHBG funds factor (§ 1000.342)

21 The Committee proposed adding § 1000.342 to encourage tribes to timely expend
22 their annual grants. Section 1000.342 would add an undisbursed funds factor to the
23 IHBG formula. As proposed, the undisbursed funds factor would apply to Indian tribes

1 whose initial allocation calculation is \$5 million or more. A tribe's initial allocation
2 calculation would include its FCAS, Need, the 1996 Minimum, and repayments or
3 additions for past over- or under-funding for each Indian tribe (under 24 CFR part 1000,
4 subpart D). Repayments or additions would not include repayments resulting from
5 enforcement actions (24 CFR part 1000, subpart F).

6 Section § 1000.342(a) proposes that an Indian tribe would be subject to the
7 undisbursed funds factor if it has undisbursed IHBG funds in an amount that is greater
8 than the sum of its prior 3 years initial allocation calculations. Under proposed §
9 1000.342(c), for purposes of this section, "undisbursed IHBG funds" means the amount
10 of IHBG funds allocated to an Indian tribe in HUD's line of credit control system (or
11 successor system) on October 1 of the fiscal year for which the allocation is made. To
12 determine the amount of undisbursed IHBG funds of a tribe under an umbrella TDHE (a
13 recipient that has been designated to receive grant amounts by more than one Indian
14 tribe), § 1000.342(c) proposes that the TDHE's total balance in HUD's line of credit
15 control system on October 1 of the fiscal year for which the allocation is made would be
16 multiplied by a percentage based on the tribe's proportional share of the initial allocation
17 calculation of all tribes under the umbrella. Under proposed § 1000.342(b), if subject to
18 the undisbursed funds factor in a given fiscal year, the Indian tribe's grant allocation
19 would be the greater of the initial allocation calculation minus the amount of undisbursed
20 IHBG funds that exceed the sum of the prior 3 years' initial allocation calculations, or its
21 1996 Minimum. Section 1000.342(d) also proposes that amounts subtracted from an
22 initial allocation calculation under this section would be redistributed under the Need
23 component of the formula to Indian tribes not subject to this section.

1 **IV. Nonconsensus Items: Other Issues for Consideration**

2 **[If needed. To be drafted later.]**

3 **V. Findings and Certifications**

4 Regulatory Review--Executive Orders 12866 and 13563

5 Under Executive Order 12866 (Regulatory Planning and Review), a determination
6 must be made whether a regulatory action is significant and, therefore, subject to review
7 by the Office of Management and Budget (OMB) in accordance with the requirements of
8 the order. Executive Order 13563 (Improving Regulations and Regulatory Review)
9 directs executive agencies to analyze regulations that are “outmoded, ineffective,
10 insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal
11 them in accordance with what has been learned. Executive Order 13563 also directs that,
12 where relevant, feasible, and consistent with regulatory objectives, and to the extent
13 permitted by law, agencies are to identify and consider regulatory approaches that reduce
14 burdens and maintain flexibility and freedom of choice for the public. This proposed rule
15 was determined not to be a “significant regulatory action” as defined in section 3(f) of
16 Executive Order 12866. The docket file is available for public inspection in the
17 Regulations Division, Office of General Counsel, 451 7th Street, SW, Room 10276,
18 Washington, DC 20410-0500. Due to security measures at the HUD Headquarters
19 building, an advance appointment to review the public comments must be scheduled by
20 calling the Regulations Division at 202 402-3055 (this is not a toll-free number).
21 Individuals with speech or hearing impairments may access this number via TTY by
22 calling the Federal Relay Service, toll free, at 1-800-877-8339.

23 Paperwork Reduction Act

1 The information collection requirements contained in this rule have been
 2 submitted to the Office of Management and Budget (OMB) under the Paperwork
 3 Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork
 4 Reduction Act, an agency may not conduct or sponsor, and a person is not required to
 5 respond to, a collection of information unless the collection displays a currently valid
 6 OMB control number.

7 The burden of the information collections in this rule is estimated as follows:

8 **REPORTING AND RECORDKEEPING BURDEN: I**

Section Reference	Number of Respondents	Number of Responses Per Respondent	Estimated Average Time for Requirement (in hours)	Estimated Annual Burden (in hours)
§ 1000.316				
§ 1000.318				
§ 1000.336				
Total Burden				

9
 10 In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of
 11 the public and affected agencies concerning this collection of information to:

12 (1) Evaluate whether the proposed collection of information is necessary for the
 13 proper performance of the functions of the agency, including whether the information
 14 will have practical utility;

15 (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed
 16 collection of information;

17 (3) Enhance the quality, utility, and clarity of the information to be collected; and

1 (4) Minimize the burden of the collection of information on those who are to
2 respond, including through the use of appropriate automated collection techniques or
3 other forms of information technology, e.g., permitting electronic submission of
4 responses.

5 Interested persons are invited to submit comments regarding the information
6 collection requirements in this rule. Comments must refer to the proposal by name and
7 docket number (FR-5650) and must be sent to:

8 HUD Desk Officer
9 Office of Management and Budget
10 New Executive Office Building
11 Washington, DC 20503
12 Fax: (202) 395-6947

13
14 and

15
16 Reports Liaison Officer
17 Office of Public and Indian Housing
18 Department of Housing and Urban Development, Room
19 451 7th Street, SW,
20 Washington, DC 20410

21
22 Interested persons may submit comments regarding the information collection
23 requirements electronically through the Federal eRulemaking Portal at
24 <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments
25 electronically. Electronic submission of comments allows the commenter maximum time
26 to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to
27 make them immediately available to the public. Comments submitted electronically
28 through the <http://www.regulations.gov> web site can be viewed by other commenters and
29 interested members of the public. Commenters should follow the instructions provided
30 on that site to submit comments electronically.

1 Regulatory Flexibility Act

2 The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an
3 agency to conduct a regulatory flexibility analysis for any rule that is subject to notice
4 and comment rulemaking requirements, unless the agency certifies that the rule will not
5 have a significant economic impact on a substantial number of small entities. The
6 requirements of this rule apply to Indian tribal governments and their tribal housing
7 authorities. Tribal governments and their tribal housing authorities are not covered by the
8 definition of “small entities” under the RFA. Accordingly, the undersigned certifies that
9 this rule will not have a significant impact on a substantial number of small entities.

10 Notwithstanding HUD’s view that this rule will not have a significant effect on a
11 substantial number of small entities, HUD specifically invites comments regarding any
12 less burdensome alternatives to this rule that will meet HUD’s objectives as described in
13 this preamble.

14 Executive Order 13132, Federalism

15 Executive Order 13132 (entitled “Federalism”) prohibits, to the extent practicable
16 and permitted by law, an agency from promulgating a regulation that has federalism
17 implications and either imposes substantial direct compliance costs on state and local
18 governments and is not required by statute, or preempts state law, unless the relevant
19 requirements of section 6 of the Executive Order are met. This rule does not have
20 federalism implications and does not impose substantial direct compliance costs on state
21 and local governments or preempt state law within the meaning of the Executive Order.

22 Unfunded Mandates Reform Act

1 Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538)
2 (UMRA) establishes requirements for federal agencies to assess the effects of their
3 regulatory actions on state, local, and tribal governments, and on the private sector. This
4 rule will not impose any federal mandate on any state, local, or tribal government, or on
5 the private sector, within the meaning of UMRA.

6 Environmental Review

7 A Finding of No Significant Impact (FONSI) with respect to the environment has
8 been made in accordance with HUD regulations at 24 CFR part 50, which implement
9 section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C.
10 4332(2)(C)). The Finding of No Significant Impact is available for public inspection
11 between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of
12 General Counsel, Department of Housing and Urban Development, 451 7th Street, SW,
13 Room 10276, Washington, DC 20410. Due to security measures at the HUD
14 Headquarters building, please schedule an appointment to review the FONSI by calling
15 the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals
16 with speech or hearing impairments may access this number via TTY by calling the
17 Federal Relay Service, toll free, at 1-800-877-8339.

18 Catalog of Federal Domestic Assistance

19 The Catalog of Federal Domestic Assistance Number (CFDA) for Indian Housing
20 Block Grants is 14.867, and the CFDA for Title VI Federal Guarantees for Financing
21 Tribal Housing Activities is 14.869.

22 List of Subjects

23 24 CFR Part 1000

1 Aged, Community development block grants, Grant programs-housing and
 2 community development, Grant programs-Indians, Indians, Individuals with disabilities,
 3 Public housing, Reporting and recordkeeping requirements.

4 Accordingly, for the reasons described in the preamble, HUD proposes to amend
 5 24 CFR 1000 as follows:

6 **PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES**

7 1. The authority citation for 24 CFR part 1000 continues to read as follows:

8 **Authority:** 25 U.S.C. 4101 et seq.; 42 U.S.C. 3535(d).

9 2. In § 1000.302, revise paragraph (2)(i) of the definition of “Formula area” to
 10 read as follows:

11 **§ 1000.302 What are the definitions applicable for the IHBG formula?**

12 * * * * *
 13 Formula area. * * *
 14 (2) * * *

15 (i) For a geographic area not identified in paragraph (1) of this definition, and for
 16 expansion or re-definition of a geographic area from the prior year, including those
 17 identified in paragraph (1) of this definition, the Indian tribe must submit, on a form
 18 agreed to by HUD, information about the geographic area it wishes to include in its
 19 Formula Area, including proof that the Indian tribe, where applicable, has agreed to
 20 provide housing services pursuant to a Memorandum of Agreement (MOA) with the
 21 tribal and public governing entity or entities of the area, or has attempted to establish
 22 such an MOA, and is providing substantial housing services and will continue to expend

1 or obligate funds for substantial housing services, as reflected in its Indian Housing Plan
2 and Annual Performance Report for this purpose.

3 * * * * *

4 3. Revise § 1000.306 to read as follows:

5 **§ 1000.306 How can the IHBG formula be modified?**

6 (a) The IHBG formula can be modified upon development of a set of measurable
7 and verifiable data directly related to Indian and Alaska Native housing need. Any data
8 set developed shall be compiled with the consultation and involvement of Indian tribes
9 and examined and/or implemented not later than 5 years from the date of issuance of
10 these regulations and periodically thereafter.

11 (b) The IHBG formula shall be reviewed not later than May 21, 2012, to
12 determine if a subsidy is needed to operate and maintain NAHASDA units or if any other
13 changes are needed in respect to funding under the Formula Current Assisted Stock
14 component of the formula.

15 4. Revise § 1000.310 to read as follows:

16 **§ 1000.310 What are the components of the IHBG formula?**

17 The IHBG formula consists of four components:

- 18 (a) Formula Current Assisted Stock (FCAS) (§ 1000.316);
- 19 (b) Need (§ 1000.324);
- 20 (c) 1996 Minimum (§ 1000.340); and
- 21 (d) Undisbursed IHBG funds factor (§ 1000.342).

22 5. In § 1000.316 add paragraph (c) to read as follows:

1 **§ 1000.316 How is the Formula Current Assisted Stock (FCAS) Component**
2 **developed?**

3 * * * * *

4 (c) Conversion. Conversion of FCAS units from homeownership (Mutual Help or
5 Turnkey III) to low-rent or from low-rent to a home ownership program.

6 (1) If units were converted before October 1, 1997, as evidenced by an amended
7 ACC, then those units will be counted for formula funding and eligibility purposes as the
8 type of unit to which they were converted.

9 (2) If units were converted after October 1, 1997, the following applies:

10 (i) Funding type. Units that converted after October 1, 1997 will be funded as the
11 type of unit specified on the original ACC in effect on September 30, 1997.

12 (ii) Continued FCAS eligibility. Whether or not it is the first conversion, a unit
13 converted after October 1, 1997, will be considered as the type converted to when
14 determining continuing FCAS eligibility. A unit that is converted to low-rent will be
15 treated as a low-rent unit for purposes of determining continuing FCAS eligibility. A
16 unit that is converted to homeownership will be treated as a homeownership unit for
17 purposes of determining continuing FCAS eligibility.

18 (3) The Indian Tribe, TDHE, or IHA shall report conversions on the Formula
19 Response Form.

20 6. Revise § 1000.318 by adding paragraphs (a)(3) and (d) to read as follows:

21 **§ 1000.318 When do units under Formula Current Assisted Stock cease to be**
22 **counted or expire from the inventory use for the formula?**

23 (a)* * *

1 (3) A Mutual Help or Turnkey III unit not conveyed after the unit becomes
 2 eligible for conveyance by the terms of the MHOA may continue to be considered
 3 Formula Current Assisted Stock only if a legal impediment prevented conveyance; the
 4 legal impediment continues to exist; the Tribe, TDHE, or IHA has taken all other steps
 5 necessary for conveyance and all that remains for conveyance is a resolution of the legal
 6 impediment; and the Tribe, TDHE, or IHA made the following reasonable efforts to
 7 overcome the impediments:

8 (i) No later than four months after the unit becomes eligible for conveyance, the
 9 Tribe, TDHE, or IHA creates a written plan of action, which includes a description of
 10 specific legal impediments as well as specific, ongoing, and appropriate actions for each
 11 applicable unit that have been taken and will be taken to resolve the legal impediments
 12 within a 24 month period; and

13 (ii) The Tribe, TDHE, or IHA has carried out or is carrying out the written plan of
 14 action; and

15 (iii) The Tribe, TDHE, or IHA has documented undertaking the plan of action.

16 (iv) No Mutual Help or Turnkey III unit will be considered FCAS 24 months after
 17 the date the unit became eligible for conveyance, unless the Tribe, TDHE, or IHA
 18 provides evidence from a third party, such as a court or state or federal government
 19 agency, documenting that a legal impediment continues to prevent conveyance. FCAS
 20 units that have not been conveyed due to legal impediments on the effective date of this
 21 regulation shall be treated as having become eligible for conveyance on the effective date
 22 of this regulation.

23 * * * * *

1 (d)(1) If a unit is damaged or has deteriorated so that demolition or replacement
2 becomes necessary, the unit may continue to be considered Formula Current Assisted
3 Stock if:

4 (i) the recipient certifies in writing to HUD within 1 year that it has taken action
5 to commence the demolition and rebuilding of the unit; and

6 (ii) the reconstruction of the unit is completed within 4 years of when demolition
7 or replacement becomes necessary.

8 (2) At the end of the 4-year period, the unit shall not be considered Formula
9 Current Assisted Stock unless the recipient notifies HUD that the unit has been
10 completed as provided in paragraph (d)(1)(ii). If the recipient fails to complete
11 construction of the unit within 4 years, HUD shall not require the recipient to repay
12 amounts allocated to the recipient for such unit during that period.

13 7. In § 1000.326 revise paragraph (a)(3), redesignate paragraph (c) as paragraph
14 (d) and add a new paragraph (c), to read as follows:

15 **§ 1000.326 What if a formula area is served by more than one Indian tribe?**

16 (a) * * *

17 (3) In cases where a State recognized tribe’s formula area overlaps with the
18 formula area of a Federally recognized Indian tribe, the Federally recognized Indian tribe
19 receives the allocation for the formula area up to its population cap, and the State
20 recognized tribe receives the balance of the overlapping area (if any) up to its population
21 cap.

22 * * * * *

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

4 * * * * *

5 8. Add § 1000.329 to read as follows:

6 **§ 1000.329 What is the minimum total grant allocated to a tribe if there is carryover**
 7 **funds available?**

8 (a) If in any given year there are carryover funds, then HUD will hold the lesser
 9 amount of \$3 million or available carryover funds for additional allocations to tribes with
 10 grant allocations of less than 0.011547 percent of that year’s appropriations. All tribes
 11 eligible under this section shall receive a grant allocation equal to 0.011547 percent of
 12 that year’s appropriations.

13 (b)(1) If the set-aside carryover funds are insufficient to fund all eligible tribes at
 14 0.011547 percent of that year’s appropriations, the minimum total grant shall be reduced
 15 to an amount which can be fully funded with the available set-aside carryover funds.

16 (2) If less than \$3 million is necessary to fully fund tribes under paragraph (a) of
 17 this section, any remaining carryover amounts of the set aside shall be carried forward to
 18 the next year’s formula.

19 (c) Certify in its Indian Housing Plan the presence of any eligible households at or
 20 below 80 percent of median income;

21 (d) For purposes of this section, carryover funds means grant funds voluntarily
 22 returned to the formula or not accepted by tribes in a fiscal year.

23 9. Revise § 1000.330 to read as follows:

1 **§ 1000.330 What are the data sources for the need variables?**

2 (a) The sources of data for the Need variables shall be data available that is
3 collected in a uniform manner that can be confirmed and verified for all AIAN
4 households and persons living in an identified area. For Fiscal Year 2016 and 2017, the
5 data used are 2000 U.S. Decennial Census data and any HUD-accepted Census
6 challenges.

7 (b) Beginning Fiscal Year 2018, the data source shall be:

8 (1) A new data source adopted by consensus by the Native American Housing
9 Assistance & Self-Determination Formula Negotiated Rulemaking Committee, 2013; or

10 (2) If no consensus is reached under paragraph (b)(1), the sources of data for the
11 Need variables shall be data collected in a uniform manner that can be confirmed and
12 verified for all AIAN households and persons living in an identified area. Initially, the
13 data used are the most recent available data that is available for all tribes from the US
14 Census Bureau.

15 (c) For fiscal year 2016 and 2017, the data for the Need variables shall be adjusted
16 annually beginning the year after the need data is collected, using Indian Health Service
17 projections based upon birth and death rate data as provided by the National Center for
18 Health Statistics.

19 (d) Indian tribes may challenge the data described in this section pursuant to §
20 1000.336.

21 **10.** Add § 1000.331 to read as follows:

22 **§ 1000.331 How will the impacts from adoption of a new data source be minimized**
23 **as the new data source is implemented?**

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

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

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

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

17 **11.** Revise § 1000.336 as follows:

18 a. In paragraph (a)(6) remove "and";

19 b. In paragraph (a)(7) remove the period and replace with "and;";

20 c. Add paragraph (a)(8);

21 d. Revise paragraphs (d), (e), and (f).

22 **§ 1000.336 How may an Indian tribe, TDHE, or HUD challenge data or appeal HUD**
23 **formula determinations?**

1 (a) * * *

2 (8) The undisbursed funds factor.

3 * * * * *

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

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

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

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

21 (3) HUD shall in writing affirm or deny the Indian tribe’s or TDHE’s request for
22 reconsideration, setting forth HUD’s reasons for the decision, within 20 calendar days of

1 receiving the request. HUD's denial of a request for reconsideration shall constitute final
2 agency action.

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

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

10 12. Add § 1000.342 to read as follows:

11 **§ 1000.342 Are undisbursed IHBG funds a factor in the grant formula?**

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

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

19 (b) If subject to paragraph (a) of this section, the Indian tribe's grant allocation
20 shall be the greater of the initial allocation calculation minus the amount of undisbursed
21 IHBG funds that exceed the sum of the prior 3 years' initial allocation calculations, or its
22 1996 Minimum.

1 (c) For purposes of this section, “undisbursed IHBG funds” means the amount of
 2 IHBG funds allocated to an Indian tribe in HUD’s line of credit control system (or
 3 successor system) on October 1 of the fiscal year for which the allocation is made. For
 4 Indian tribes under an umbrella TDHE (a recipient that has been designated to receive
 5 grant amounts by more than one Indian tribe), if the Indian tribe’s initial allocation
 6 calculation is \$5 million or more, its undisbursed IHBG funds is the amount calculated by
 7 multiplying the umbrella TDHE’s total balance in HUD’s line of credit control system (or
 8 successor system) on October 1 of the fiscal year for which the allocation is made by a
 9 percentage based on the Indian tribe’s proportional share of the initial allocation
 10 calculation of all tribes under the umbrella.

11 (d) Amounts subtracted from an initial allocation calculation under this section
 12 shall be redistributed under the Need component among all Indian tribes not subject to
 13 paragraph (a) of this section (while also retaining the 1996 Minimum).

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15 Date: _____

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Lourdes Castro Ramirez
 Principal Deputy Assistant Secretary
 for Public and Indian Housing

[FR-5650-P-11]