

APPROVED BY COMMITTEE
September 20, 2016
09:09am

U.S. Department of Housing and Urban Development (HUD)
Indian Housing Block Grant Formula Negotiated Rulemaking Committee

Session 8
January 26, 2016

The meeting started with an opening prayer. Lourdes Castro Ramirez, Principal Deputy Assistant Secretary for Public and Indian Housing, HUD, welcomed everyone on behalf of Secretary Castro and the entire HUD team and thanked them for coming. She formally introduced Randy Akers, Acting Deputy Assistant Secretary for the Office of Native American Programs (ONAP), who will be serving as a member of the Committee. She acknowledged that committee members raised concerns about the process after HUD distributed a draft rule in November that included procedures for adjusting data, and stated that they are convening this meeting to ensure everyone that they are committed to this process. The Co-Chairs also welcomed everyone.

Co-Chair Bryan called the roll. There is a quorum.

Action Items for Full Committee

Facilitator Introduction and Approval

The committee approved Ms. Fiala as facilitator by consensus.

Committee Review and Approval of the Proposed Agenda

The committee approved the agenda by consensus.

Committee Review and Approval of the Minutes from August 2015

Committee members made one small addition and one small correction to the public comment section of these minutes. They accepted the (revised) minutes by consensus.

Procedural Overview

Aaron Santa Anna, Assistant General Counsel for Regulations, Office of General Counsel, emphasized that the status of the rule itself is no different than where it was in August 2015 – the rule has not gone through departmental clearance or to the Office of Management and Budget (OMB) for formal review. He reminded the committee that this meeting “is going to be limited to discussion and vote on the adjustments to the data sources and the approval of the preamble language.”

Overview of HUD's Proposed Data Source Adjustments

Mr. Akers put forward a proposal for the committee's consideration. It incorporates the three adjustments proposed by HUD in the draft rule to improve the formula and allow for the equitable distribution of funds. Mr. Akers turned the floor over to their technical expert, Todd Richardson, Associate Deputy Assistant Secretary, Office of Policy Development and Research, to explain the proposal in detail.

Data Source Adjustments Overview

Mr. Richardson said that HUD discussed concerns with the Census Bureau experts about undercounts in the Census data and significant differences in the population counts between Census and the American Community Survey (ACS). They also discussed using a better source for aging data.

HUD plans on using Decennial Census data for the AIAN population count and the most recent five-year ACS data for the other six Needs variables. HUD proposes making the following three adjustments to this data:

1. Correct the Census undercount in reservation and trust lands by increasing the Census 2010 count of AIAN by 4.88 percent. This increase would only apply to reservation and trust lands, but not the AIAN count in other tribal areas.
2. Take the new base number from (1) above and age it to the current year using Census county level population estimates of AIAN population change. The formula currently uses IHS birth and death data to age the Census data.
3. Compare the adjusted Census AIAN population count to the ACS AIAN population count to develop a factor for adjusting ACS counts. ACS is a sample survey, so in small areas it can have large error. The Census is 100 percent count so it is the most accurate population estimate. HUD will adjust the ACS AIAN population count so that it lines up with the Census AIAN population count. Then HUD will use this ratio to reweight the other six Needs variables in the ACS.

HUD will make all of these adjustments both on counts for AIAN alone and on counts for AIAN in combination with other races.

At the committee's request, a new simulation was prepared so the committee can understand the effects of the proposed adjustments. This simulation differs from those provided in the past in that it uses more recent ACS data (2008-2012 rather than 2006-2010) and newer data files from the Fiscal Year (FY) 2015 allocation for other aspects of the Formula calculation. The resulting change in formula allocation for all tribes is also calculated relative to a different base -- the actual allocation in FY 2015 -- than the previous simulations.

Action Items for Full Committee

1. Aging Data Adjustment

Mr. Richardson described the aging data adjustment in more detail. He explained that, in order to account for population changes which occur in the ten years which elapse between Censuses, they need to adjust the data for population growth. The Data Study Group looked at population estimates by county prepared by the Indian Health Service (IHS) and also by the Census Bureau as the basis for making adjustments. They had several concerns about both data sources. However, the Census population estimates have three big improvements over IHS data:

1. They use Census 2010 as the base instead of Census 2000
2. In addition to births and deaths, they also adjust for migration in and out of the county.
3. They provide separate estimates for single race and multi-race AIAN.

The data run shows that aging the data matters.

Mr. Richardson addressed the large variation in allocation for some tribes between the current and previous data runs. He said that the main reason for the change is that HUD moved from using ACS 2006-2010 data to ACS 2008-2012 data. As a result, some tribes had big changes in some or all of the household Needs variables. Further, HUD changed the base from the FY 2014 to the FY 2015 final allocation. Funding was higher in FY 2015, and when there is more funding, more of the money is allocated based on needs (as opposed to FCAS), which accentuates the effects of introducing new data for needs.

Discussion

Committee members were concerned that they had only 24 hours to understand the differences between the prior and the new data run, and to determine if other factors than the adjustments or if potential errors are causing some of the changes. One committee member stated that “we do want to go on record expressing a fairly significant concern about the fact that we haven't had time collectively, all of us at this table, to delve into that data run.”

A committee member asked what HUD will implement if the committee does not reach consensus on any of the proposals. Ms. Castro Ramirez responded that HUD's proposal is to use ACS data and the three proposed adjustments that are on the agenda today. However, she stressed that she wants to continue with the process and continue with the discussion, and asked that they flag issues that are important because it may impact HUD's thinking about these proposals. Another committee member asked if all three proposed adjustments need to be applied together. Mr. Richardson stated that the adjustments can stand by themselves, ‘but the way this is designed, the most critical piece to it is that they're tied to the last ACS, which is the weighting adjustment piece.’

The Co-Chair suggested a modified agenda: the committee will hear an overview on all three data adjustments, and then negotiate on each issue for two hours. The agenda modification passed by consensus.

2. *AIAN Data Adjustment (Undercount)*

Mr. Richardson discussed the 2010 Census Coverage Measurement (CCM) Estimation Report, which determined that AIAN persons were undercounted by 4.88 percent on reservation and trust land only. The Census Bureau is 90 percent confident that the true undercount on reservation and trust land is between 1 and 9 percent, so HUD recommends using the point estimate of 4.88 percent to adjust all reservation and trust lands. The study also provides an estimate of coverage for other tribal areas, and indicates that a small overcount may have occurred. Since the estimated overcount is not statistically significant, however, HUD does not propose adjusting for the overcount.

A committee member stated that Barrow in rural Alaska was seriously undercounted by Census 2010. He said that Barrow will be hurt if HUD inflates the counts for reservation and trust land elsewhere, and they also will be hurt by being undercounted, so they will have a “double whammy.”

3. *ACS Data Adjustment (Reweighting)*

HUD proposes to address this problem by adjusting ACS data using a ratio derived by comparing the Decennial Census AIAN population count (after adjustments for undercount and population change) to the count in the ACS. If the Census count is higher than the ACS population count for formula geographies, the counts for each of the ACS based Needs variables are adjusted up. If the Census population count is lower, then the ACS Needs variables are adjusted down. This reweighting will be done annually.

The committee took a break, and then had two rounds of caucuses.

Discussion of HUD’s Proposal

Randy Akers introduced HUD’s proposal. He stated: “Again, it’s our position that these components, these adjustments, are necessary and desirable in order to be able to ensure an equitable and fair distribution of Indian Housing Block Grant funds to all tribes.”

Several committee members questioned whether they should vote on other language in addition to the three specific proposals. HUD explained that they are only voting on the three proposals. Any language that looks different from what they have seen before is due to the fact that the committee agreed that HUD would make a decision on language when the committee could not reach consensus.

Aging and AIAN (Undercount) Adjustments

The committee started by addressing proposal one on the undercount:

“the most recent U.S. Decennial Census data adjusted for any statistically significant undercount confirmed by the U.S. Census Bureau”

A friendly amendment to proposal one to consider proposals one and two together was accepted. Proposal two addresses aging the data:

“the most recent U.S. Decennial Census data adjusted for any statistically significant undercount confirmed by the U.S. Census Bureau and updated annually using the U.S. Census Bureau county level population estimates for Native Americans.”

A committee member said that they are looking at two different things as they consider this language: whether the adjustments correct what they are intended to correct, and whether there are any unintended consequences of making those adjustments.

The vote was called on combined proposals one and two. There were three dissenting votes. Two committee members dissented because they need more time to look at the data and assess its accuracy and implications. A third committee member stated that two changes would address his concerns. First, adopt regulations that have a rational basis, which means that they need to assume that there is an undercount in rural Alaska. Second, confine the 4.88 percent adjustment to just the AIAN population count. He clarified that the correct term is Remote Alaska, not rural Alaska. He said there are two options regarding Remote Alaska: hold it harmless from the effects of applying the 4.88 percent increase, or include Remote Alaska in the 4.88 percent increase. Mr. Richardson agreed that it is “definitely a valid point worth considering” to treat Remote Alaska, which was not part of the CCM study, the same way reservation and trust lands are treated since they present similar challenges for the Census.

The Co-chair stopped the clock on the discussion of the above combined proposal. Several committee members put in a technical assistance request for a run that applies the 4.88 percent increase to Remote Alaska so they can see the result.

ACS Data Adjustment

The committee started to discuss the third (now second) adjustment factor. This proposal addresses reweighting the ACS data:

“adjusted by the ratio of the count of AIAN persons as provided by paragraph (b)(i) of this section to the ACS count of AIAN persons”

After a discussion of what language the committee is addressing, it was determined that they only are looking at the three specific adjustments proposed by HUD. Other language in the full proposal already has been approved.

A committee member asked the Co-Chair to call for the question on this proposal. A number of committee members dissented. One dissenter said the issue is the inclusion of ACS. His proposed alternative is to strike all reference to ACS data in HUD's original proposal. HUD did not accept the proposed amendment and asked for another alternative proposal. No other alternatives were proposed.

The committee agreed to resume their discussion of combined proposals one and two the following morning. HUD can propose a reconsideration of the third adjustment, but three-quarters of the committee would need to vote to allow the reconsideration.

Public Comments

Leon Jacobs recognized the MOWA Band of Choctaw Indians of Alabama Tribal Chief. There were no public comments.

The meeting ended with a closing prayer.

**U.S. Department of Housing and Urban Development (HUD)
Indian Housing Block Grant Formula Negotiated Rulemaking Committee**

**Session 8
January 27, 2016**

The meeting started with an opening prayer.

Lourdes Castro Ramirez, Principal Deputy Assistant Secretary for Public and Indian Housing, HUD, thanked everyone for attending yesterday. She introduced Juliàn Castro, Secretary of HUD, who stated that it is a top priority to make sure that they “use every single day that’s left in the Administration to improve quality of life in Indian Country.” He said that the committee is doing important work, and that HUD wants to ensure that “there’s a fair, thorough process that leads to a good result.”

Summary of Day 1 and Plan for Day 2

Yesterday the committee discussed HUD’s proposal. The Co-Chairs stopped the clock on the discussion of two data source adjustments -- aging the data and adjusting for the undercount -- because the committee was waiting for a data run. Today, they will finish the discussion of data source adjustments and then review the proposed Preamble.

Action Items for Full Committee

AIAN Data Adjustment (Undercount)

A committee member proposed language that holds Remote Alaska harmless. Todd Richardson stated that, while the new language is the most conservative approach, HUD doesn’t think they “can actually figure out how to make that work within the existing formula.” Therefore, HUD proposed treating Remote Alaska like reservation and trust lands. Mr. Richardson said that this would have a “very tiny effect” on everybody else. The Co-Chair made the decision to stop the clock and save the remaining time on the clock until after the committee looks at the data run including an undercount adjustment for Remote Alaska.

Reconsideration of ACS Adjustment

HUD asked for reconsideration of the ACS data adjustment language. Three-quarters of committee members need to vote in favor of reconsideration to bring the issue back to the table for discussion. The committee discussed whether the protocols permit a vote for reconsideration after an issue is voted down. HUD believes that the issue is open for reconsideration. However, there were not enough votes to move this issue forward for reconsideration.

1. *AIAN Data Adjustment (Undercount) (Adjustment 1)*

The Committee returned to a consideration of the undercount/aging proposal. In response to a committee member's request, HUD proposed a friendly amendment to separate the proposal into three components: adjusting the AIAN count on reservation and trust lands for undercount, applying the undercount adjustment to Remote Alaska, and aging the data using Census population estimates. Each component would be discussed and then voted on. The friendly amendment was accepted.

A committee member called for the vote on the first proposal, the AIAN adjustment (additions to the original language are in capital letters):

“Adjusted for any statistically significant undercount FOR AIAN POPULATION confirmed by the U.S. Census Bureau.”

One committee member dissented because the word “any” is too broad. He proposed making the language more specific by adding “for AIAN population.” HUD agreed with the amended language. There was a call for the question and the above language passed by consensus.

2. Treatment of Remote Alaska (Adjustment 2)

HUD proposed that the committee consider and approve the following:

“For purposes of this paragraph, Indian Lands in Remote Alaska shall be treated as Reservation and Trust Lands unless the U.S. Census Bureau includes Remote Alaska in their Census Coverage Measurement or comparable study.”

There was call for the question on the above language and there was dissent. One of the dissenters wanted to see a data run which focused exclusively on this adjustment rather than the full set of adjustments proposed by HUD. Mr. Richardson stated that the effect would be much smaller – probably one-tenth of the effect they showed – if HUD does not reweight the ACS variables.

HUD called for the question on adding Remote Alaska to the undercount adjustment. The above proposal was approved by consensus.

3. Aging Data Adjustment (Adjustment 3)

HUD asked the committee for a 20 minute extension to discuss the aging component of the proposal. The committee agreed by consensus to allocate 20 minutes to continue the discussion. HUD called for a vote on the proposed language below. The proposal passed by consensus.

“The data under this Paragraph shall be updated annually using the U.S. Census Bureau county level Population Estimates for Native Americans.”

Ms. Castro Ramirez yielded time to Mike Andrews, Majority Staff Director and Chief Counsel, U.S. Senate Committee on Indian Affairs. Mr. Andrews told the committee: “They want to know what does Indian Country say with regard to the formula.” He charged everyone to the extent possible to make the tough decisions and try to find solutions, “because the best solutions come from Indian Country.”

Discussion of Preamble

Aaron Santa Anna, Assistant General Counsel for Regulations, stated that the document that will be reviewed is an updated version of the November, 2015 document that HUD distributed following the Committee review at the August, 2015 session. The updates include comments received from the Committee members and some administrative edits such as dates. The Preamble language is designed to help the public understand what the Negotiated Rulemaking Committee is doing and why.

Beginning of Preamble through Description of Eighth Negotiated Rulemaking Session

Mr. Santa Anna asked for a vote to approve all changes from the beginning of the Preamble through new section IV (up to the language before subsection titled “Undercount on reservations”). This includes adding: more discussion about what happened in the Data Study Group; that the proposal for the AIAN population be the greater of the most recently available ACS, Census or Challenge data did not reach consensus at the full committee level; and a new section IV titled “8th Meeting of the Negotiated Rulemaking Committee, Data Source for the Needs Variable” that includes a little background about why they are having this meeting and what they’ve discussed at this session. The committee approved the changes by consensus.

AIAN Adjustment (Undercount)

The following language was approved by consensus:

“The eighth meeting of the Rulemaking Committee, considered this adjustment, and after consideration, voted on the adjustment. The Committee proposed to modify the language to clarify that the count would be adjusted for a statistically significant undercount specifically for the AIAN population count. After this language was changed, the Committee reached consensus on this adjustment. Additionally, the Committee considered a proposal to consider Indian Lands in Remote Alaska the same as Reservation and Trust Lands when it is determined that there has been a statistically significant undercount in Reservation and Trust Lands, unless the U.S. Census has included Remote Alaska in its coverage. This provision was proposed in order to address the fact that the U.S. Census Bureau’s Census Consensus Management (CCM) Study did not include Indian Lands in Remote Alaska, the term “Remote Alaska” meaning Type of Enumeration Area 4 as delineated by the U.S. Census Bureau for the 2010 Decennial Census.” The Committee also reached consensus on this item.”

The vote also approved language (added to the original paragraph in this section) ensuring that certain lands in New Mexico are included in the definition of what is a reservation and trust land.

Aging Data Adjustment

At the end of the section, HUD added a new paragraph with two sentences:

During the eighth meeting of the Rulemaking Committee, the Committee considered this adjustment, and after consideration, voted on the adjustment. The Committee reached consensus on this adjustment.

HUD also added a new sentence, as follows:

AFTER: While not perfect, the Census Bureau County level Population Estimates take into account migration and provide a more accurate count of AIAN persons.”

ADD: “These Population Estimates do not come from the ACS.”

The vote was called on the aging data adjustment and the language was approved by consensus.

Tribal Comments

Mr. Santa Anna said they wanted to include a summation of the comments that were submitted on the November draft. After discussion by the committee and several proposed revisions, the committee approved the section by consensus. The only change to the original draft is the following:

“One commenter expressed support for developing and using a federally- or tribally-administered national tribal survey to collect information concerning enrollment in a recognized tribe, in lieu of the Decennial Census or the ACS.”

Other Non-Consensus Items

Mr. Santa Anna said that HUD substituted language for “B. Revise the definition of AIAN,” that better represents the discussion of this issue in August 2015. The committee discussed the language and how to accurately reflect what happened at the August 2015 meeting. With the substitution of the following language as the last sentence, the committee approved “B. Revise the definition of AIAN” by consensus:

“The Committee discussed this issue as recommended, considered language drafted by the Drafting Committee, however the Full Committee did not take the language up for a formal vote due to the withdrawal of the language.”

“Control Total Weights Within the ACS”

Mr. Santa Anna said that the proposed Preamble language is essentially what was in the November 2015 draft. He said that HUD made a few edits to reflect what happened at yesterday's meeting, and also added a new paragraph. The committee had an extensive discussion about this section. After several non-consensus votes, the vote on this section was called again and it was approved by consensus with the following changes:

“During the eighth meeting of the Rulemaking Committee, the Committee considered this adjustment, and after consideration, voted on the adjustment. The committee did not reach consensus on the vote for this adjustment. The majority of Tribal Committee members did not support this adjustment. While some members supported this adjustment, the majority of Tribal Committee members expressed concern with this proposal. Some members opposed the use of ACS as the data source for the formula and therefore voted against the adjustment. Other members supported the use of ACS data but believed that reweighting the data as proposed by HUD was not appropriate for other reasons. Specifically, some Tribal Committee members believed that the undercount of one variable, AIAN persons, could not be properly assumed to translate to other variables.”

HUD Request for Public Comment

HUD added a new section which is “a specific request for comments on the pros and cons and whether or not there are any alternatives regarding the use of ACS for the adjustment.” However, after committee discussion and several proposed revisions, HUD withdrew the language.

“Control Total Weights within the ACS”

The committee returned to language they previously had skipped over when discussing “Control total weights within the ACS.” After discussion of two paragraphs in this section, the committee voted by consensus to approve the following language:

“To address this issue, HUD proposed to adjust the ACS data for the variables described in paragraph (a) – (f) of § 1000.324 by the ratio of the adjusted total of AIAN persons based on the aged 2010 Decennial Census to the most recently available ACS count of AIAN persons. HUD believes that this adjustment will make the ACS data methodology for small area geographic areas better align with the methodology used in the 2000 Decennial Census and provide a more accurate count of AIAN persons for smaller tribes. Some tribal members of the committee did not.”

Tribal Recommendation

Ms. Castro Ramirez proposed that they add the following paragraph at the end of the section on “Tribal Recommendations.”

“In addition, the Committee notes for the public that it did not consider the variables underlying the Needs component of the formula.”

The committee discussed this proposal at length. A new proposal was offered for consideration and, after a friendly amendment by HUD was accepted, the committee approved the following language by consensus:

“The Committee notes that for a variety of reasons the Committee did not accommodate the examination of the Needs variables.”

Next Steps

Mr. Santa Anna went over next steps. He stated that since there’s an election coming, HUD wants to move as expeditiously as possible on this rule. First the rule must go through departmental clearance, and then it needs Office of Management and Budget (OMB) approval. After that, HUD will send the proposed rule to the Congressional Authorizing Committee for 15 days. At that point, they move it to publication. There will be a 60-day public comment period. After the public comment period closes, HUD will summarize the public comments as thoroughly as possible so they are prepared for any legal challenges down the line. The committee will get the public comments in advance of their next meeting, “at which time we’ll go through public comments and make a determination as to whether or not the comments are such that we should make changes to the rule that’s being proposed.” Once a final rule is developed, HUD must take it through the same process, with the exception of review by the Congressional Authorizing Committee. Then it goes to publication, but the rule will not be effective until a later date.

Public Comments

There were no public comments.

Closing Remarks

Ms. Castro Ramirez said they had a “very productive” two days. She recognized the contributions of the Co-Chairs, HUD staff and FirstPic. Several committee members shared closing remarks. They thanked the Co-Chairs and committee members for their efforts and expressed appreciation for all of the important work that the committee achieved. The Co-Chairs said it was their honor to serve as Co-Chairs, and stressed the importance of the work they are doing here.

The meeting ended with a closing prayer.