

## IHBG Formula Negotiated Rulemaking Recommendations and Proposals

TAB 6: <b>[Former #30]</b>	<b>Appeals Process</b>
	The proposal was first introduced on 09/22/2003
There was a recommendation voiced during Committee discussion to address the Appeals Process as an issue.  To date there is no regulatory language associated with this proposal.	
<b>Reference Documents:</b>  TSB: #30  TR: #38	

### Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

**[Issue #6]**  
**PROPOSED REGULATION**  
**FOR**  
**APPEALS**  
**by**  
**Wayne Ducheneaux**

**§ 1000.534 What constitutes substantial noncompliance?**

(1) HUD will review the circumstances of each noncompliance with NAHASDA and the regulations on a case by case basis to determine if the noncompliance is substantial. This review is a two step process. First, there must be a noncompliance with NAHASDA or these regulations. Second, the noncompliance must be substantial. A noncompliance is substantial if:

(a) The noncompliance has a material effect on the recipient meeting its major goals and objectives as described in its Indian Housing Plan;

(b) The noncompliance represents a material pattern or practice of activities constituting willful noncompliance with a particular provision of NAHASDA or the regulations, even if a single instance of noncompliance would not be substantial;

(c) The noncompliance involves the obligation or expenditure of a material amount of the NAHASDA funds budgeted by the recipient for a material activity; or

(d) The noncompliance places the housing program at substantial risk or fraud, waste or abuse.

(2) Notwithstanding the above, if HUD takes any action or makes any determination that would result in reducing, withdrawing or adjusting a TDHE's or Tribe's block grant funding in the current or in the future year in the amount of at least \$50,000 or in an amount at least equal to 20% of that year's block grant to the TDHE or Tribe, and the TDHE or Tribe has complied with §1000.536 and §1000.118 herein, such action or determination shall be deemed, solely for purposes of this section, as a finding of substantial noncompliance for which a TDHE or Tribe is entitled to a hearing pursuant to §1000.540.

[Issues # 6, 12]

**PROPOSED REGULATION: CHALLENGE/APPEAL PROCESS**  
**Committee Work Product with additional Change**  
**(CIHA)**

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

(a) An Indian tribe, TDHE, or HUD may challenge data used in the IHBG formula and HUD IHBG formula determinations including those concerning formula area. The challenge and the collection of data and the challenge of HUD IHBG formula determinations is an allowable cost for IHBG funds.

(b) An Indian tribe or TDHE that has data in its possession that it contends (i) are more accurate than data contained in the U.S. Decennial Census or (ii) demonstrate HUD has made an erroneous IHBG formula determination, and the data were collected in a manner acceptable to HUD, may submit the data and proper documentation to HUD. Beginning with the Fiscal Year 1999 allocation, in order for the challenge to be considered for the upcoming Fiscal Year allocation, documentation must be submitted by \_\_\_\_\_. HUD shall respond to such data submittal or challenge to a HUD IHBG formula determination not later than 45 days after receipt of the data and either approve or deny the validity of such data or challenge to a HUD IHBG 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 denies 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 formula allocation.

(2) Should the Indian tribe or TDHE and HUD be unable to resolve any discrepancy within 30 calendar days 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 the reconsideration.

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