

Issue #12
Data Challenge

§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 the following HUD formula determinations: census data, tribal enrollment, formula area, FCAS, TDC, FMR, and I.H.S. birth and death rates, but excluding AEL and the Inflation factor. The challenge and the collection of data and the appeal of HUD formula determinations ~~and collection of data for this purpose~~ is an allowable cost for IHBG funds.
- (b) An Indian tribe or TDHE that (i) has data in its possession that it contends are more accurate than data contained in the U.S. Decennial Census and such data meets the requirements set forth in §1000.330, or that (ii) seek to appeal a HUD 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, i~~In order for a Census challenge to be considered for the upcoming Fiscal Year allocation, documentation must be submitted by March 30th. HUD shall respond to all census 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 ~~by the date of the formula allocation, the dispute shall be carried forward to the next funding year and resolved in accordance with the dispute resolution procedures set forth in this part for model housing activities (§1000.118) 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 twenty 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

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- (ii) If HUD prevails, ~~no further action shall be required~~ it shall issue a written decision denying the Indian tribe or TDHE's petition for reconsideration which constitutes final agency action.
- (c) In the event HUD questions 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 provide a commitment to serve the population indicated in the geographic area.