

STUDY / SUBGROUP: Need

TOPIC: Existing formula variables and their weights

1. AIAN;
2. HH < 30% Median Income;
3. HH 30% - 50% Median Income;
4. HH 50% - 80% Median Income;
5. HH overcrowded;
6. HH w/o kitchens or plumbing;
7. HH paying more than 50%;
8. Housing Shortage (see separate report).

CONSENSUS:

1. AIAN;
2. HH < 30% Median Income;
3. HH 30% - 50% Median Income;
4. HH 50% - 80% Median Income;
5. HH overcrowded;
6. HH w/o kitchens or plumbing;
7. HH paying more than 50%;
8. Housing Shortage (see separate report).

ACTIONS NEEDED:

Examine formula runs with 2000 Census data

STILL TO DO:

1. Examine formula runs with 2000 Census data
2. Add weights to existing variables
3. Include housing shortage variable (see separate report)
4. Combine overcrowded housing variable with the kitchens and plumbing variable (see separate report)
5. Consider alternate data (see separate report)
6. Revise definition of formula median income (see separate report)
7. Revise definition of overlapping formula areas (see separate report)
8. Revise definition of formula areas (see separate report)
9. Revise definition of substantial housing services (see separate report)
10. Review eligibility of state tribes (see separate report)
11. Examine the effect of TDC as geographic multiplier (see separate report)
12. Report on birth/death rate issue (see separate report)

RATIONALE:

OTHER AFFECTED PARTS:

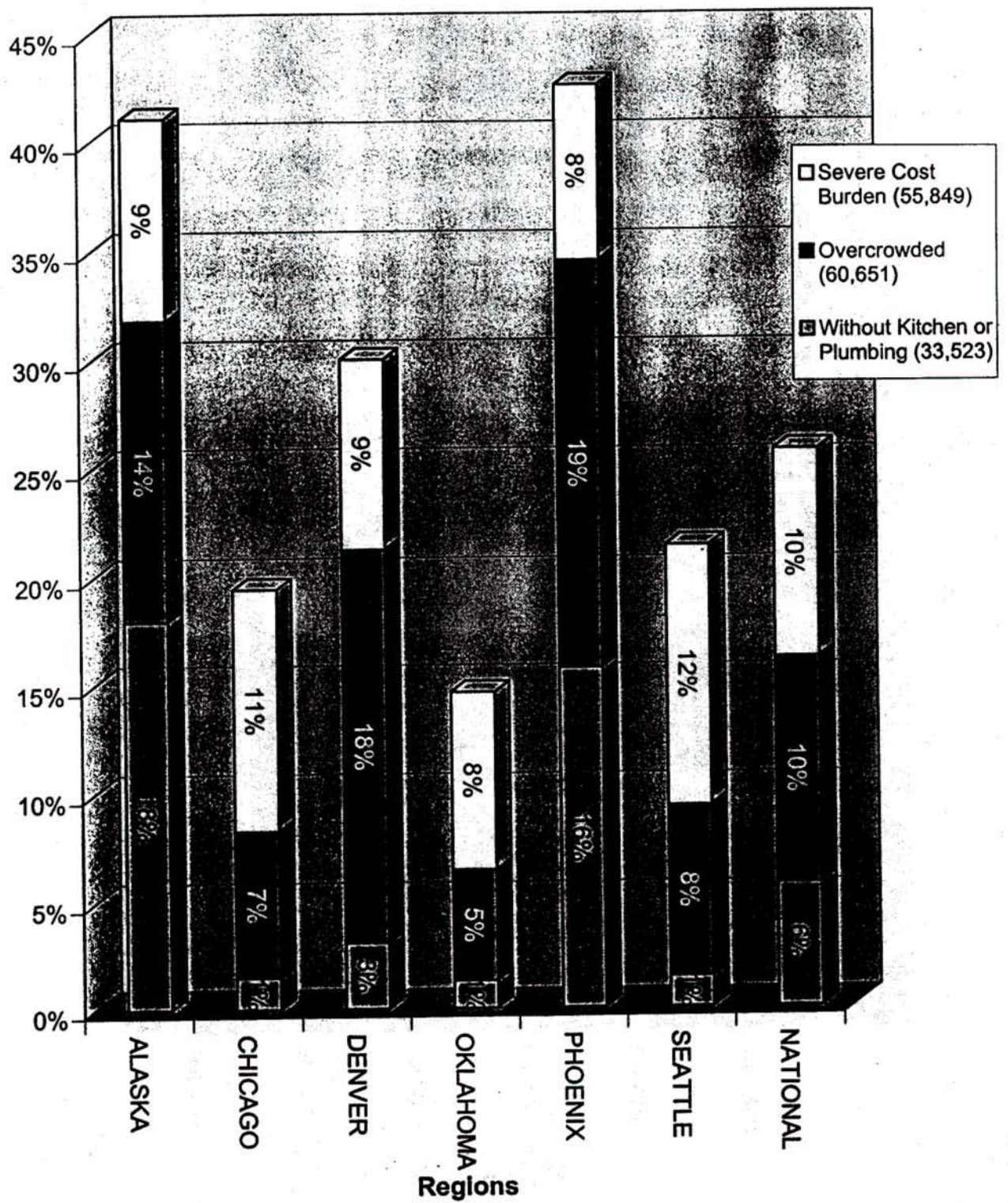
- Data challenge issues assigned to joint sub-group with CAS

OTHER:

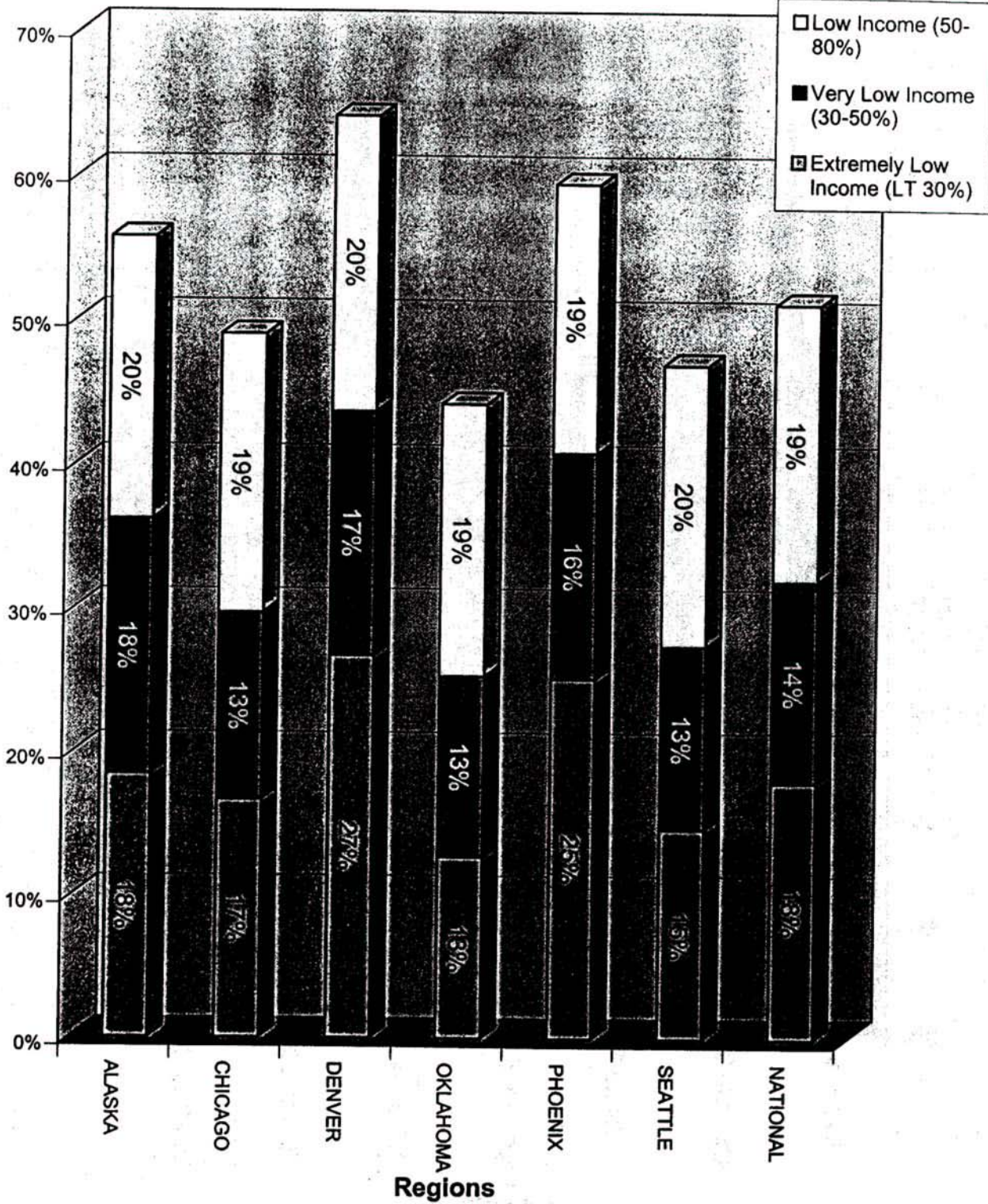
NEED
VARS

7

Percent of Native Americans with Severe Housing Needs in IHBG
Formula Areas by Region - Census 2000



Percent of Native Americans Low Income in IHBG Formula Areas by Region - Census 2000

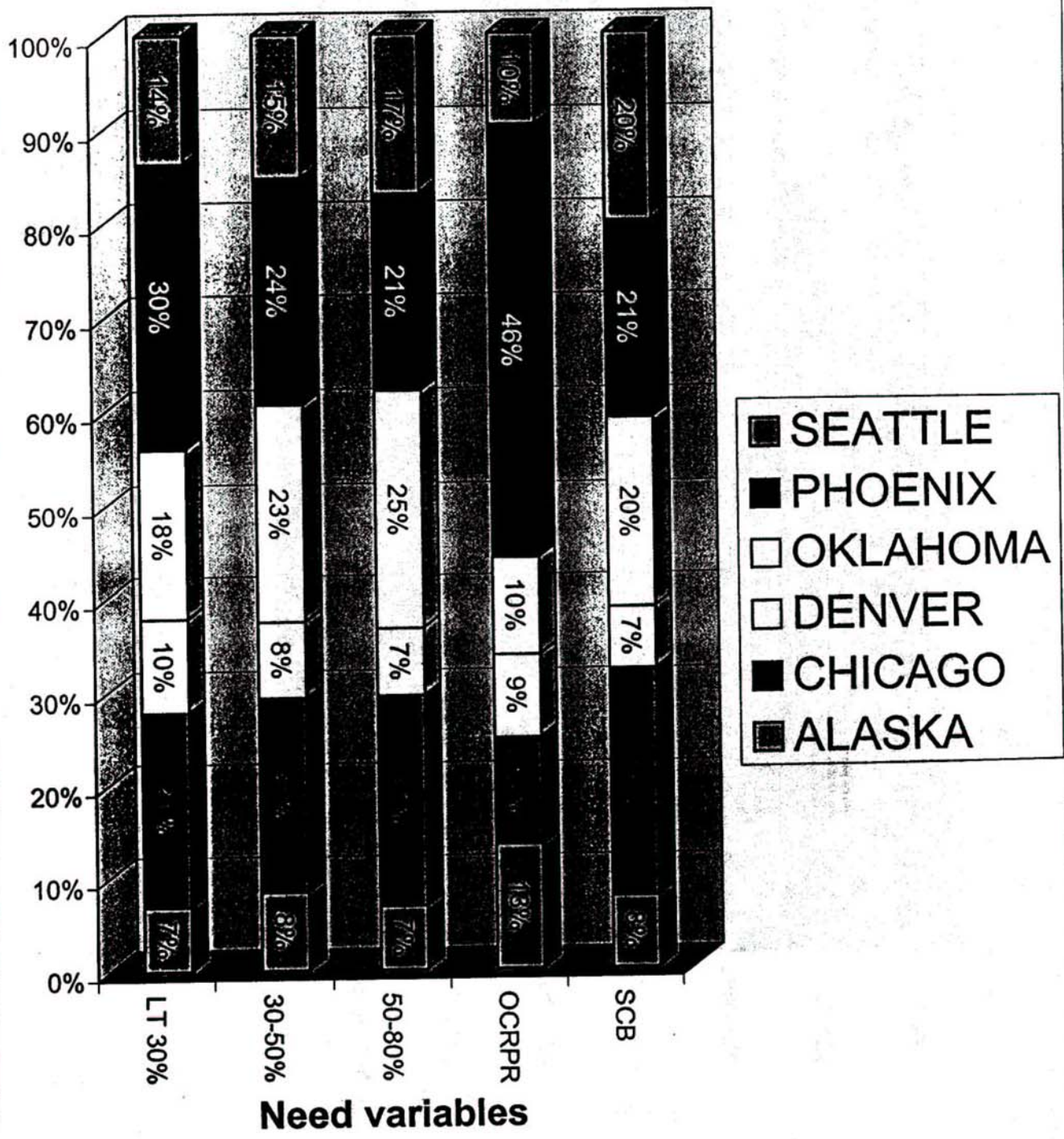


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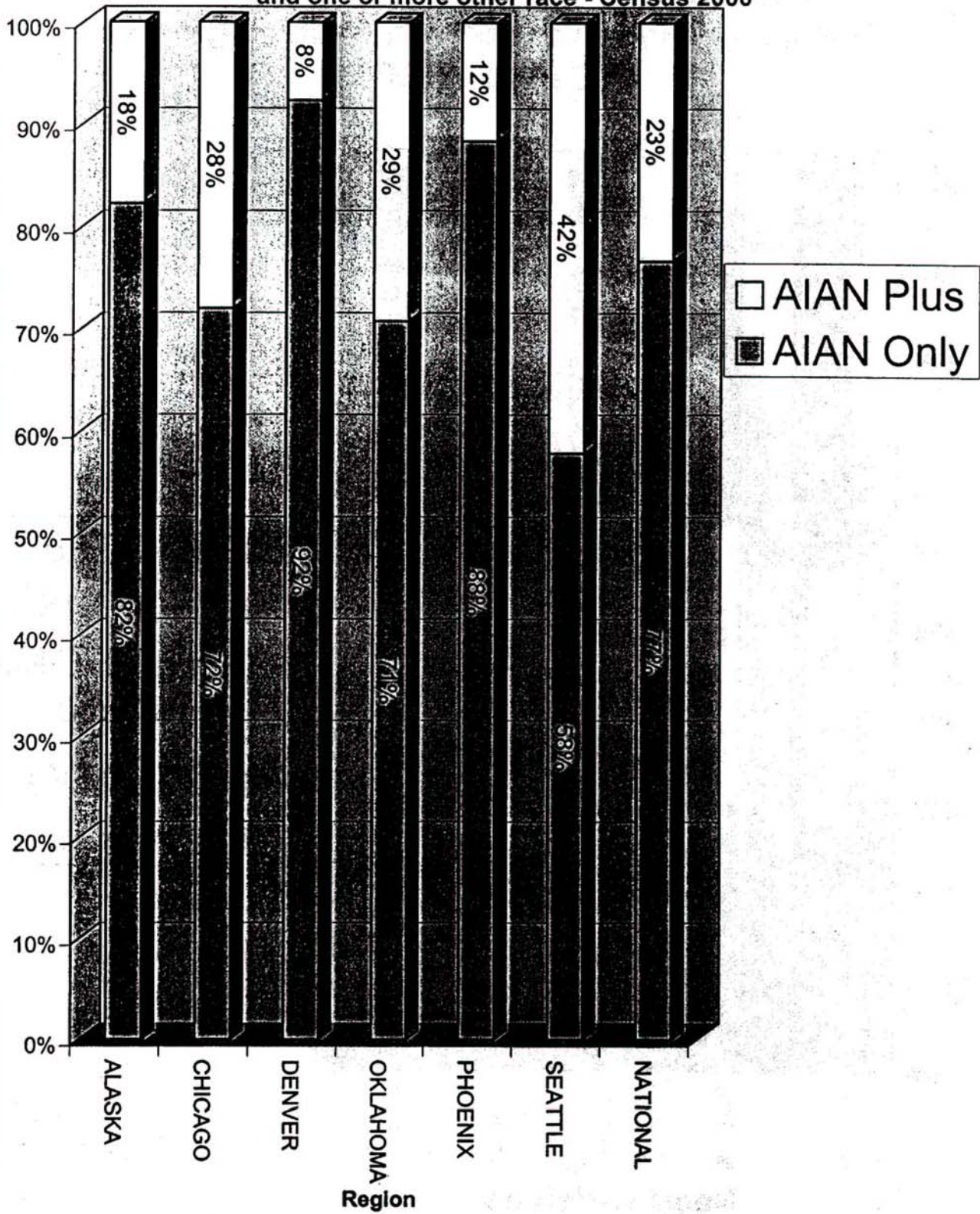
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JEEL
JARS

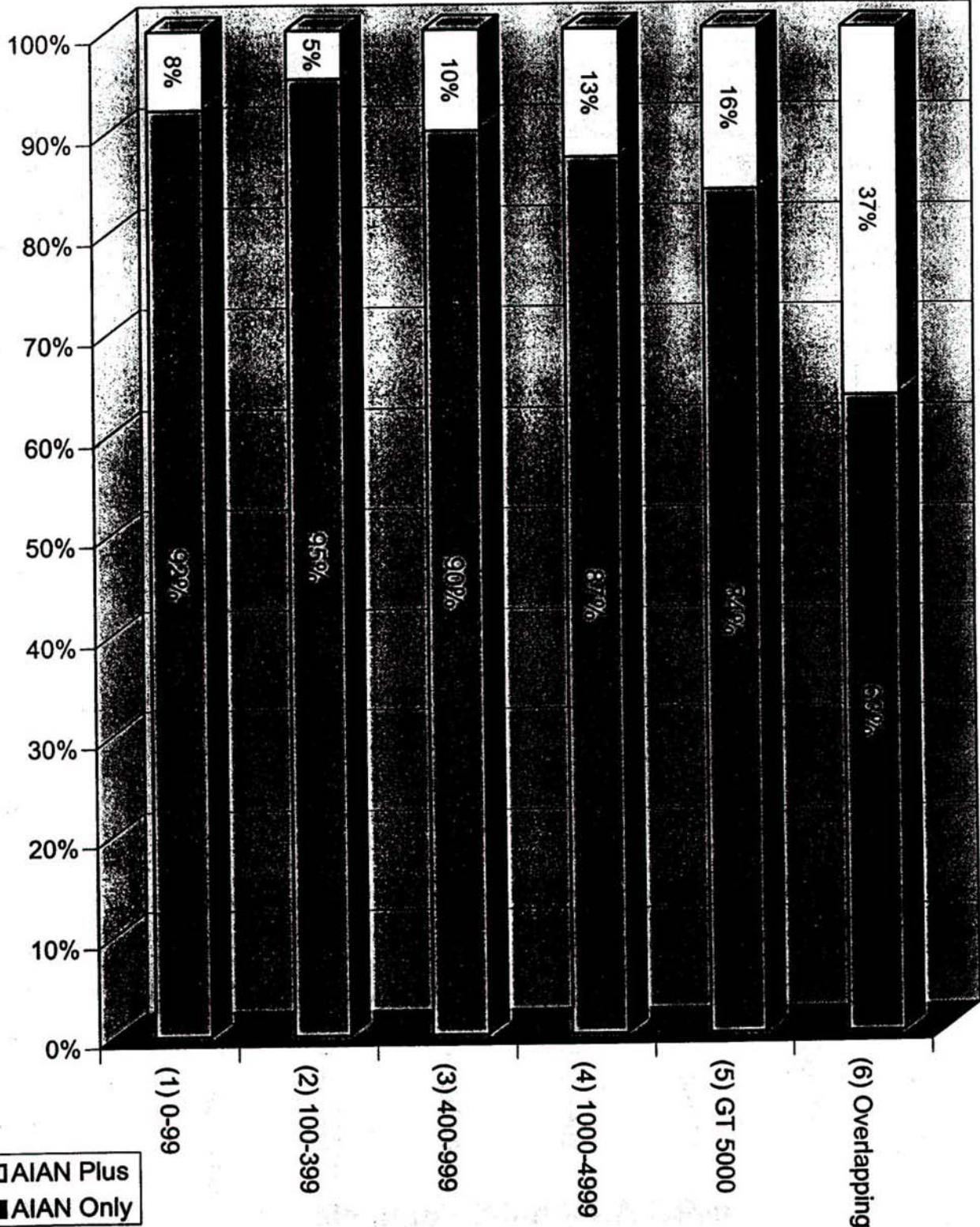
Share Native American Households with Housing Need Variables in Each Region - Census 2000



Percent Native American persons checking AIAN only versus AIAN and one or more other race - Census 2000



Effect of multi-race identification by AIAN Population - Census 2000

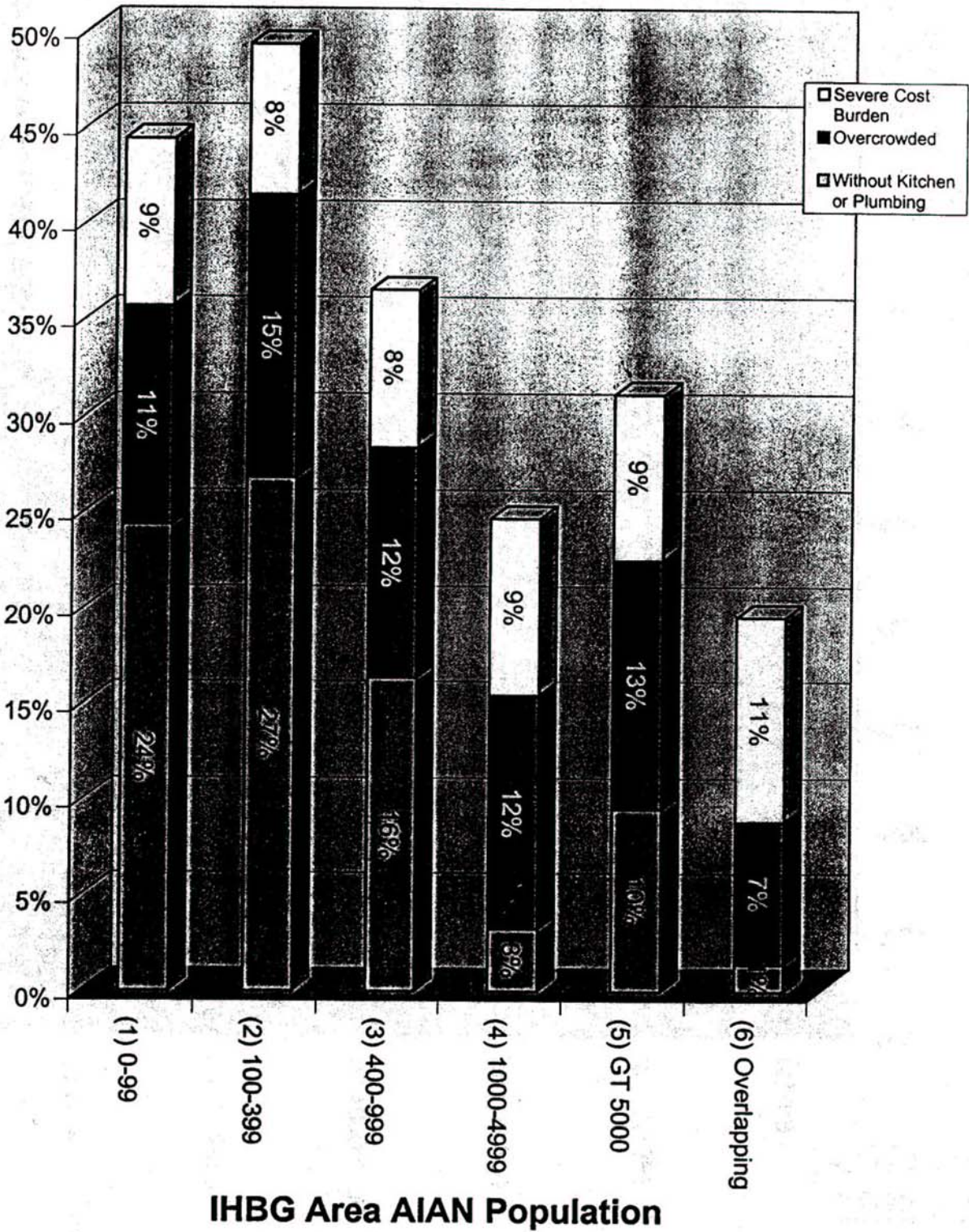


■ AIAN Plus
■ AIAN Only

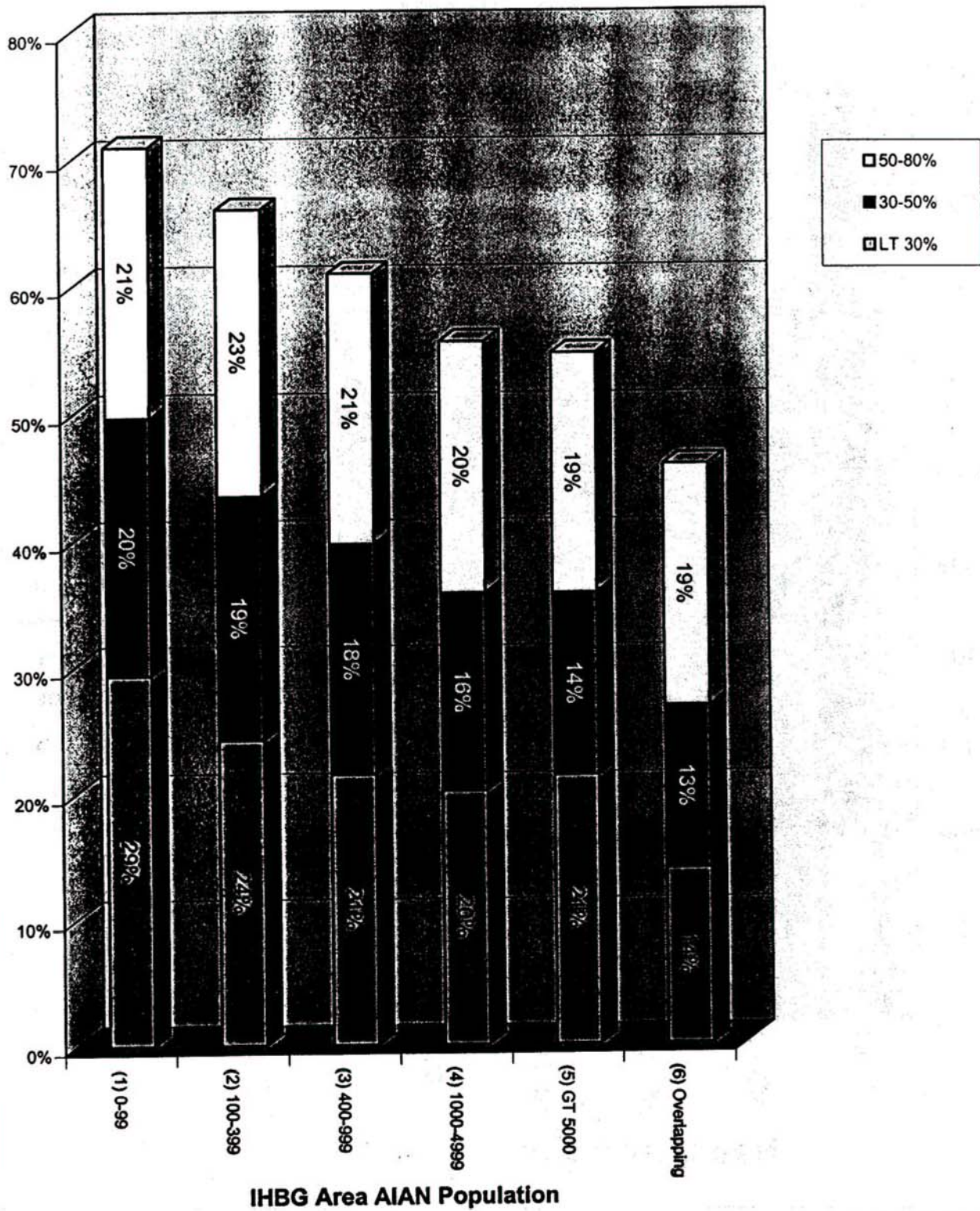
IHBG Area AIAN Population

MW
FUNDING

Percent of Native Americans with Severe Housing Needs in IHBG
Formula Areas by Size of IHBG Areas - Census 2000

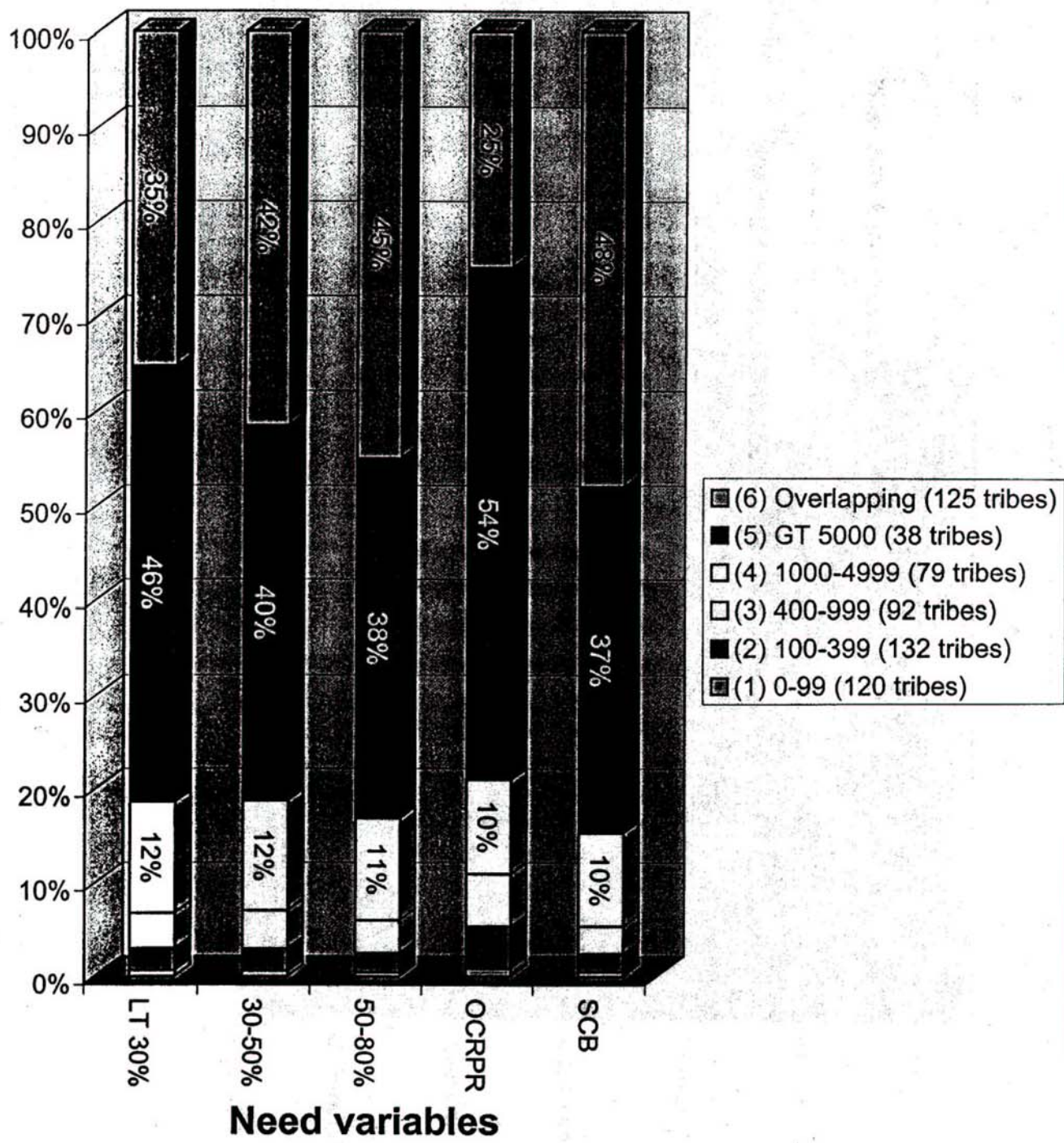


Percent of Native American Low Income in IHBG Formula Areas by IHBG Area AIAN Population - Census 2000



Mr
Furnace

Share of Native American Households with Housing Need Variables by IHBG Area Population



STUDY / SUBGROUP: Need

TOPIC: Inclusion of housing shortage variable

The current variable is the Housing Shortage which is the number of AIAN households with an annual income less than or equal to 80% of formula median income reduced by the combination of current assisted stock and units developed under NAHASDA weighted at 15%.

CONSENSUS:

ACTIONS NEEDED:

1. Decide whether to remove the variable from the formula.
2. If it is to be included, modify CAS definition to include Section 8 units.
3. If it is to be included, determine whether NAHASDA units will be included in CAS definition.
4. If NAHASDA units are included in CAS definition, define NAHASDA unit.
5. If variable is included, review effect of formula median income definition.

STILL TO DO:

1. Examine requested formula runs with 2000 Census data.

RATIONALE:

1. Whether this variable is still effective as a formula component to assist Tribes with little or no previous housing development.
2. Whether the variable as stated addresses housing shortage.
3. Examined a number of alternate data sources (i.e. vacancy rates) which do not adequately address housing shortage.
4. Housing shortage may be adequately addressed by other variables

OTHER AFFECTED PARTS:

OTHER:

STUDY / SUBGROUP:

Need

TOPIC: Total Development Cost

1000.325 The need component is adjusted by the TDC.

1000.302 TDC is defined as the sum of all costs for a project including all undertakings necessary for administration, planning, site acquisition, demolition, construction or equipment and financing (including payment of carrying charges) and for otherwise carrying out the development of the project, excluding off site water and sewer. TDC amounts will be based on a moderately designed house and will be determined by averaging the current construction costs as listed in not less than two nationally recognized residential construction cost indices.

See also Appendix A(6) and Appendix B(6).

CONSENSUS:

It remains as a geographic multiplier in the formula.

ACTIONS NEEDED:

1. May need to be adjusted
2. Need to develop a mechanism for challenging TDC
3. Review the definition in 1000.302
4. Revise references in Regulation from 1000.338 to 1000.302 in Appendix.

STILL TO DO:

RATIONALE:

1. The definition appears to be unclear.
2. To determine actual impact of TDC on formula allocations.

OTHER AFFECTED PARTS:

The challenge issues referred to joint sub-group with CAS.

OTHER:

STUDY / SUBGROUP: Need

TOPIC: Separating and/or deleting variable regarding overcrowding and lack of plumbing.

1000.324 (b) AIAN households which are overcrowded or without kitchen or plumbing weighted at 25%.

See attached graph of regional distribution of these variables.

CONSENSUS:

ACTIONS NEEDED:

Decide whether to separate and/or delete variable.

STILL TO DO:

1. Examine formula allocations with 2000 Census data.
2. If separated, determine weights.
3. If separated, request formula run with new weights.
4. **Make further determination for deletion of one or both.**

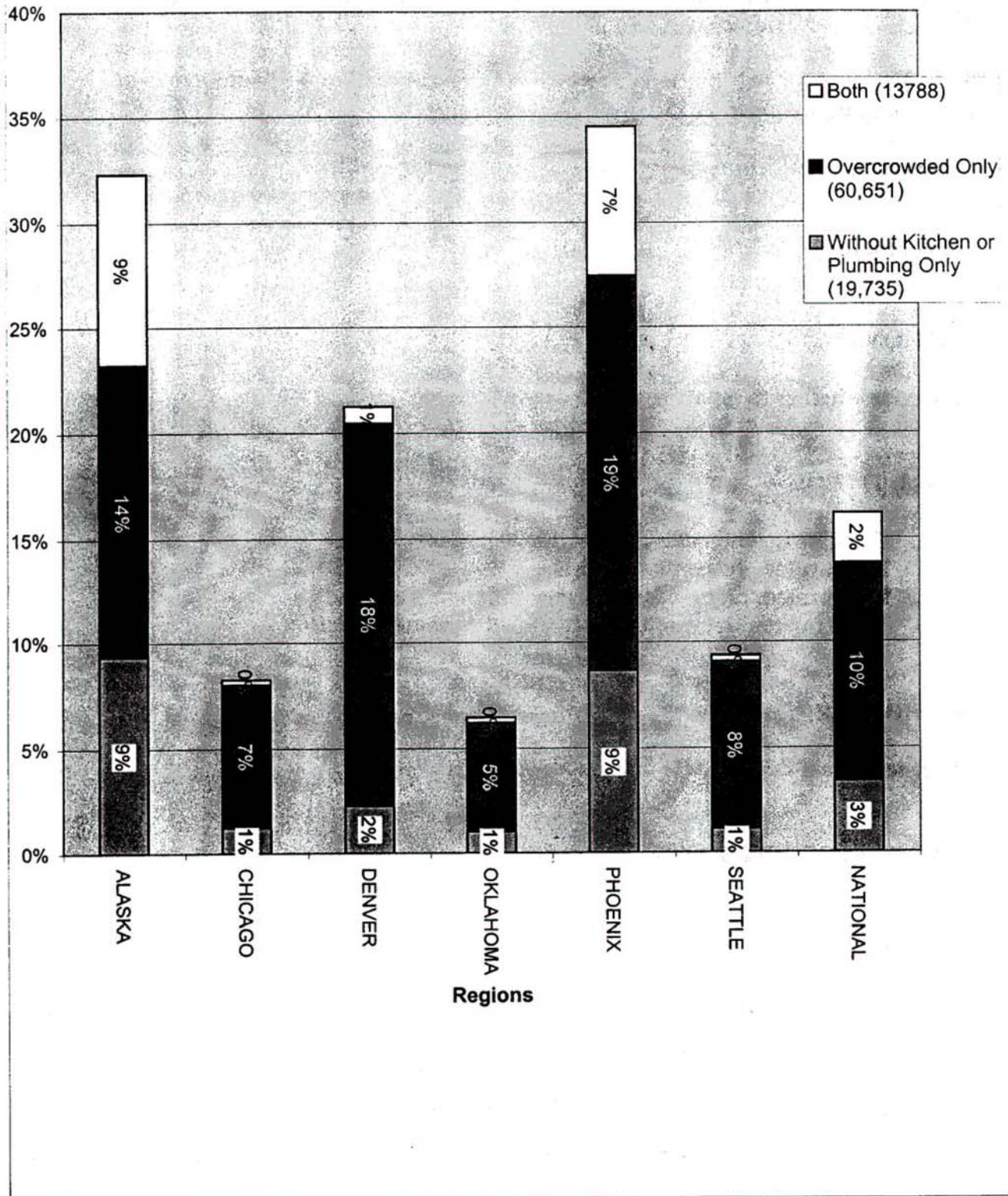
RATIONALE:

To determine if this variable adequately measures need.

OTHER AFFECTED PARTS:

OTHER:

Percent of Native Americans Overcrowded or Without Kitchen/Plumbing in IHBG Formula Areas by Region - Census 2000



STUDY / SUBGROUP: **Need**

TOPIC: Overlapping Area Definition
1000.326 What if a Formula Area is served by more than one Tribe?

See attached draft language dated 8/8/03.
See attached draft language dated 8/19/03.

CONSENSUS:

ACTIONS NEEDED:

Produce final draft Regulation.

STILL TO DO:

1. Request redline version of 8/8/03 draft from HUD (Ariel).
2. Request redline version of 8/19/03 draft from Bob Carlile.
3. Discuss both drafts
4. Produce combined draft

RATIONALE:

Because current rules relating to overlapping area are not well codified.

OTHER AFFECTED PARTS:

Regulation on substantial housing services (see separate report).

OTHER:

August 8, 2003
NEEDS WORKGROUP
Proposed Re-Write of § 1000.326

§ 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 Indian tribes, the funds allocated to that Indian tribe for the geographic area in which the formula areas overlap will be divided based on a formal agreement between affected tribes in the overlapping geography.

(b) In the event the tribes involved cannot agree on the allocation of formula funds in the overlapping area, HUD shall divide the formula funds proportionally among the tribes:

(1) Based on the percentage of substantial housing services over the greater period of time; **[and/or]**

(2) Proportional share of the AI/AN persons in the overlapping geographic area; **[and/or]**

(3) Substantial planned commitment to the overlapping geographic area; **[and/or]**

(4) 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, Indian Health Service user data, and Bureau of Indian Affairs data.

(c) In the event HUD is unable to make a determination in favor of any one or more affected tribes based on requirements of paragraph (b) above, HUD shall equally distribute the overlapping formula area funds to all affected tribes in the affected geography; except that federally recognized tribes shall receive the allocations for the overlapping area where a state recognized tribe's formula area overlaps with the formula area of a federally recognized Indian tribe in the expansion or re-definition of new or additional Formula Area.

PROPOSED DRAFT
8/19/2003
Needs workgroup
Formula Area subgroup

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 Indian tribes, the funds allocated to the affected tribe(s) for the overlapping area(s) will be divided based on formal agreement between the affected tribe(s).
- (b) In the absence of (a), HUD shall divide formula funds for the overlapping area among affected tribe(s) based on:
 - 1. Percentage of substantial housing activities in the overlapping area since 1996; *[and/or]*
 - 2. Proportional share of the AIAN persons in the overlapping area; *[and/or]*
 - 3. Substantial planned commitment to the overlapping area; *[and/or]*
 - 4. Tribal membership in the geographic area (not to include dually enrolled tribal members) which will be based on data that all Indian tribes involved agree to use. Suggested data sources include tribal enrollment lists, Indian Health Service User Data, and Bureau of Indian Affairs data.
- (c) In the absence of resolution per (a) and (b) above, HUD shall equally distribute the overlapping formula area funds to all affected tribes in the overlapping geography; except that federally recognized tribes shall receive the allocation for the overlapping area where a state recognized tribe's formula area overlaps with the trust area of a federally recognized Indian tribe.

STUDY / SUBGROUP:

Need

TOPIC: Formula Area Definitions

See attached draft language 1000.302 “Formula Area”.

Note: Section 3 is the subject of continuing discussions by the Alaska Caucus and is therefore not finalized.

CONSENSUS:

ACTIONS NEEDED:

Produce a final draft regulation.

STILL TO DO:

1. Produce definitions for Oklahoma areas
2. Produce definitions for Alaska areas
3. Request from HUD redline version comparing original Regulation.

RATIONALE:

1. The current definition of Formula Area relies on outdated Census terms and does not adequately describe Formula Areas or codify certain rules relied upon by HUD.

OTHER AFFECTED PARTS:

1. See definition of Overlapping Formula Area. (see separate report)
2. See definition of Substantial Housing Services. (see separate report)

OTHER:

August 8, 2003

NEEDS WORKGROUP

Proposed Re-Write of Formula Area Definition

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

* * * * *

Formula area. (1) Formula areas are:
(i) Reservations, as defined by the Census;
(ii) Trust Lands;
(iii) Department of the Interior Near Reservation Service Areas;
(iv) **Former Indian Reservation areas in Oklahoma Indian Areas, as defined by the Census as Oklahoma Tribal Statistical Areas (OTSA) [* not approved by the workgroup yet *];**
(v) Congressionally Mandated Service Areas;
(vi) State Tribal Areas, as defined by the Census as State Designated American Indian Statistical Areas (SDAISAs);
(vii) Tribal Designated Statistical Areas (TDSAs); and
(viii) California Tribal Jurisdictional Areas established or reestablished by federal court judgment.

(2)(i) For geographic area definitions not identified in paragraph (1) of this definition, and for expansion or re-definition of a geographic area from the prior year, the Indian tribe must submit on a form developed by HUD for this purpose, the geographic area it wishes to include in its Formula area, including proof that the Indian tribe:

(A) Where applicable, has agreed to provide housing services pursuant to a Memorandum of Agreement (MOA) with the tribal and public governing entity or entities of the area, or have attempted to establish such an MOA; and

(B) Could exercise court jurisdiction; or

(C) Is providing substantial housing services and will continue to expend or obligate funds for substantial housing services as reflected in the form developed by HUD for this purpose.

(ii) HUD shall notify all tribes within the proposed Formula Area that are potentially affected by the request and give them the opportunity to submit information and comments that the tribes may deem relevant to the determination. HUD shall provide written notice of its basis for the determination and its effects on each tribe to all tribes/TDHES within the Formula Area.

(3) Notwithstanding paragraphs (1) and (2) of this definition, all Alaska data on population and housing not on a reservation shall be credited as set forth in § 1000.327 to the Alaska Native Village, the regional Indian tribe, or to the regional corporation established pursuant to the Alaska Native Claims Settlement Act. For purposes of § 1000.327 and this definition:

(i) The geographic area of the Alaska Native Village is delineated by its associated Alaska Native Village Statistical Area (ANVSA) or Tribal Designated Statistical Area (TDSA) to the extent the area encompassed by such statistical designation does not substantially exceed the township or townships in which the village is located for purposes of the Alaska Claims Settlement Act. If an ANVSA or the TDSA

substantially exceeds the township or townships in which a village is located, then the geographic area of the village shall be such census designation as most closely approximates the township or townships in which the village is located.

(ii) The geographic area of the regional corporation shall be the area established for the corporation by the Alaska Native Claims Settlement Act.

(4) In some cases, the population data for an Indian tribe within its Formula Area is greater than its tribal enrollment. In general, for those cases to maintain fairness for all Indian tribes, the population data will not be allowed to exceed twice an Indian tribe's enrolled population. However, an Indian tribe subject to this cap may receive an allocation based on more than twice its total enrollment if it can show that it is providing affordable housing activities to substantially more non-member Indians and Alaska Natives who are members of another federally recognized Indian tribe than it is to members.

(5) In cases where an Indian tribe is seeking to receive an allocation more than twice its total enrollment, the tribal enrollment multiplier will be determined by the total number of Indians and Alaska Natives the Indian tribe is providing affordable housing activities (on July 30 of the year before funding is sought) divided by the number of members the Indian tribe is providing affordable housing activities. For example, an Indian tribe which provides housing to 300 Indians and Alaska Natives, of which 100 are members, would then be able to receive an allocation up to three times its tribal enrollment if the Indian and Alaska native population in the area is three or more times the tribal enrollment.

* * * * *

STUDY / SUBGROUP:

Need

TOPIC: Development of Definition of Substantial Housing Services

(see attached draft language 1000.302 “Substantial Housing Services”)

CONSENSUS:

ACTIONS NEEDED:

Produce final draft Regulation

STILL TO DO:

Determine final figures for percentages.

RATIONALE:

1. The term “Substantial Housing Services” is used throughout Subpart D but is not defined at all.
2. HUD currently uses un-codified standards to make these determinations.

OTHER AFFECTED PARTS:

1. See definition of Overlapping Formula Areas (separate report).
2. See definition of Formula Area (separate report).

OTHER:

August 8, 2003

NEEDS WORKGROUP

Proposed Definition of "Substantial Housing Services"

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

* * * * *

Substantial housing services are:

(1) Affordable housing activities funded from any source provided to AIAN persons with incomes 80% of the national median income or lower, equivalent to _____% of the increase in the IHBG formula allocation that the tribe would receive as a result of adding the proposed geography; or

(2) Affordable housing activities funded with IHBG funds provided to AIAN persons with incomes 80% of the national median income or lower, equivalent to _____% of the total IHBG grant; and

(i) _____% of whose tribal members, as determined by the tribe, reside within the geographic area; or

(ii) Whose tribal members constitute _____%, as determined by the tribe, of the total AIAN persons within the geography.

* * * * *

August 8, 2003

NEEDS WORKGROUP
FORMULA AREA SUBGROUP

Proposed Definition of “Substantial Housing Services”
PROPOSED DRAFT

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

* * * * *

Substantial housing services are:

(1) Affordable housing activities funded from any source provided to AIAN persons with incomes 80% of the national median income or lower, equivalent to **100% or more** of the increase in the IHBG formula allocation that the tribe would receive as a result of adding the proposed geography; or

(2) Affordable housing activities funded with IHBG funds provided to AIAN persons with incomes 80% of the national median income or lower, equivalent to **51% or more** of the total IHBG grant; and

(i) **51% or more** of whose tribal members, as determined by the tribe, reside within the geographic area; or

(ii) Whose tribal members constitute **51% or more**, as determined by the tribe, of the total AIAN persons within the geography.

* * * * *

STUDY / SUBGROUP:

Need

TOPIC: Eligibility of State Tribes for funding

See attached 7/22/03 email from Marion McFadden
“Subject: Excluding State Tribes from IHBG Need funding”

CONSENSUS:

ACTIONS NEEDED:

1. Determining whether state Tribes are eligible for Need funding.
2. Can state Tribes be treated differently than Federal Tribes for purposes of the Formula Allocation?
3. Can state Tribes expand their Formula Areas?
4. Can state Tribes increase their population cap?
5. Can state Tribes serve non-member Indians?

STILL TO DO:

1. Have workgroup review HUD’s email regarding eligibility.
2. Examine relationship between statutory eligibility and Regulatory eligibility.
3. Request further clarification of HUD’s positions.

RATIONALE:

Widespread misconceptions over State tribes inclusion in the Formula.

OTHER AFFECTED PARTS:

OTHER:

Marion McFadden
07/22/2003 08:50 AM

To: Edward V. Fagan/PIH/HHQ/HUD@HUD
cc: Rodger J. Boyd/PIH/HHQ/HUD@HUD, Michael G. Gerber/PIH/HHQ/HUD@HUD, Deborah M. Lalancette/ONAP/DEN/HUD@HUD, Bruce A. Knott/ONAP/DEN/HUD@HUD, Randall R. Akers/ONAP/DEN/HUD@HUD, Jacqueline A. Kruszek/ONAP/DEN/HUD@HUD, ROBERT S. KENISON/OGC/HHQ/HUD@HUD
Subject: Excluding State Tribes from IHBG Need Funding

Ed,

At the last Denver session the question arose whether the formula could exclude State-recognized tribes from receiving funding based on need. Apparently there is a suggestion that State tribes should only receive FCAS funding.

As we discussed, section 4(12)(A) of the statute defines Indian tribe to include "a State recognized tribe"; section 4(12)(C) further defines State recognized tribe as a tribe that has been recognized as an Indian tribe by any state AND for which an IHA had a 1937 Act contract with HUD and received funding within 5 years prior before the date of enactment of NAHASDA (10/26/1996).

Section 302(b) of the Act requires that the formula "be based on factors that reflect the need of the Indian tribes and the Indian areas of the tribe for assistance for affordable housing activities," including FCAS and the extent of poverty and economic distress and the number of Indian families within Indian areas of the tribe. Section 302(c) further requires consideration of administrative capacity and "the extent to which terminations of assistance under title V [i.e. the ineligibility of tribes to receive 1937 Act funding, HOME, Youthbuild, McKinney-Vento Homeless Assistance, etc.] will affect funding available to State recognized tribes."

Bob Kenison and I agree that NAHASDA envisions both FCAS and Need funding for State tribes. Since the statute does not distinguish between State- and Federally-recognized tribes in its requirement that the formula be based on factors reflecting need, there does not appear to be any authority to zero out Need funding for eligible State tribes. It might be possible for the Committee to come up with factors assigning different weight to factors that affect State tribes differently than they affect other tribes, but these factors must be created with some rational, principled basis.

Please give me a call if you want to discuss further. If you want me to send a note to the tribes conveying this message prior to the next session, let me know. I recall that Earl and Darlene Tooley were asking--was there anyone else?

Marion

STUDY / SUBGROUP:**Need****TOPIC:** Definition of Formula Median Income

1000.302 For purposes of the Formula Median Income is determined in accordance with section 567 of the Housing and Community Development Act of 1987 (42 U.S.C. 1437a note).

The Housing and Community Development Act of 1987 defines Median Area Income as follows: "For purposes of calculating the median income for any area that is not within a metropolitan statistical area... the Secretary of Housing and Urban Development or the Secretary of Agriculture (as appropriate) shall use whichever of the following is higher: (1) the median income of the county in which the area is located or (2) the median income of the entire non-metropolitan area of the state."

CONSENSUS:**ACTIONS NEEDED:**

1. Revise definition of Formula Median Income to reflect National Median Income as defined in NAHASDA statute.

STILL TO DO:

1. Review requested Formula run. (may require special Census tabulation)
2. Review Median Income comparison summary. (Todd and Jennifer)

RATIONALE:

The current definition of Formula Median Income may not reflect statutory requirements. If so, some Tribes may be required to serve some people that are not included in the funding allocation.

OTHER AFFECTED PARTS:**OTHER:**

STUDY / SUBGROUP:

Need

TOPIC: Alternative Data Sources

1000.330 What are data sources for the need variables?

The sources of data for the need variables shall be data available that is collected in a uniform manner that can be confirmed and verified for all AIAN households and persons living in an identified area. Initially, the data used are US Decennial Census data.

See also definition of Indian Section 4(9) of the statute.

CONSENSUS:

ACTIONS NEEDED:

1. Other than the US Census, are there other sources of data for use in the allocation formula that are objectively measurable and collected uniformly across the Nation?
2. A determination of other data sources that are more reliable than Census variables for determination of eligibility (specifically related to the definition of Indian).

STILL TO DO:

Request legal determination from HUD regarding whether continued use of Census for determining who is an Indian is inconsistent with the statute?

Determine differences between eligibility for service and use of the data for allocations.

RATIONALE:

The Formula Allocation is potentially based on a count of persons who are not statutorily Indian.

OTHER AFFECTED PARTS:

OTHER:

STUDY / SUBGROUP:

Need

TOPIC: Inclusion of Birth and Death Rate in determination of total number of AIAN persons for Formula allocation

CONSENSUS:

ACTIONS NEEDED:

It exists in the current formula but is there a better factor to adjust the population figure?

STILL TO DO:

Final determination made, no further action needed.

RATIONALE:

The issue was reviewed by the group including the method by which IHS determines these figures based on national statistics. The group determined that while imperfect, it's the best available adjustment factor for AIAN persons (the only place used in the formula).

OTHER AFFECTED PARTS:

OTHER: