

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

<p>TAB 1: [Former # 4]</p>	<p>Over/Under: Amending FCAS regulations to (1) expressly state the importance of accurately reporting such stock and the consequences of not doing so and (2) allowing undercounts to be set-off against overcounts</p>
	<p>The proposal was first introduced on 08/18/2003</p>
<p>A proposal was submitted by UNAHA titled “Amending Formula Current Assisted Stock Regulations to (1) Expressly State the Importance of Accurately Reporting Such Stock and the Consequences of Not doing so and (2) Allowing Undercounts to be Set-Off Against Overcounts.” To date, there is no regulatory language associated with this proposal.</p>	
<p>Reference Documents:</p> <p>TSB: Tab 4</p>	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

[Issue #1]
PROPOSED REGULATION
FOR
COUNTING FCAS (OVER AND UNDERCOUNTING)
by
Jason Adams

With assurance and agreement made with the Negotiated Rule Making Committee that HUD will provide back-funding for any undercount of units which occurred and were reported or challenged prior to October 30, 2003, the Negotiated Rule Making Committee agrees that the following additional regulation provision shall be added to the NAHASDA regulations. These changes are conditioned upon a letter being sent by HUD upon finalization of the particular regulations summarizing this decision.

§ 1000.315 Is a recipient required to report changes to the Formula Current Assisted Stock (FCAS) on the Formula Response Form?

A recipient shall report changes to the Formula related information on the Formula Response Form, including corrections to the number of Current Assisted Stock (FCAS) identified in the HUD Formula Response Form, during the time period required by HUD which shall be not less than 60 days from the date the form is sent to the recipient. They shall be given a minimum of 60 days to submit such corrections. The Formula Response Form is the only mechanism that a recipient shall use to report or make changes to the number of FCAS.

§ 1000.319 What would happen if a recipient misreports or fails to correct Formula Current Assisted Stock (FCAS) information on the Formula Response Form?

A recipient is responsible for verifying and reporting changes to their Formula Current Assisted Stock (FCAS) on the Formula Response Form to ensure that data used for the formula are accurate. Reporting shall be completed in accordance with requirements in Subpart D and the Formula Response Form. If a recipient receives an overpayment of funds because it failed to report such changes on the Formula Response Form in a timely manner, the recipient shall be required to repay the funds in order that the funds be subsequently distributed to all tribes by HUD in accordance with the next NAHASDA formula allocation. Recipients will not be provided back funding for any units that they fail to report on the Formula Response Form in a timely manner. HUD shall have three years from the date a Formula Response Form is sent out to take action against any recipient that fails to correct or make appropriate changes on that Formula Response Form. Review of FCAS will be accomplished by HUD as a component of A-133 audits, routine monitoring, FCAS target monitoring or other reviews.

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

<p>TAB 2: [Former #1 & #23]</p>	<p>Definition Of Formula Median Income: Eliminate inconsistency & inequities of current median income definitions</p>
	<p>The proposal was first introduced on 08/18/2003 & 08/20/2003</p>
<p>The proposal was submitted by UNAHA titled “ Eliminate Inconsistency and Inequities of current Median Income Definitions” and there was also a recommendation to address the issue reported out by the Needs Workgroup as “Definition of Median Income.” To date, there is no regulatory language associated with the proposals.</p>	
<p>Reference Documents:</p> <p>TSB: #1, #23</p> <p>TR: #37, #41, #67</p>	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

[Issue #2]
PROPOSED REGULATION
FOR
DEFINITION OF MEDIAN INCOME
by
Jack Sawyers

§ 1000.10 What definitions apply in these regulations?

Except as noted in a particular subpart, the following definitions apply in this part:

(a) The terms “Adjusted income,” “Affordable housing,” “Drug-related criminal activity,” “Elderly families and near-elderly families,” “Elderly person,” “Grant beneficiary,” “Indian,” “Indian housing plan (IHP),” “Indian tribe,” “Low-income family,” “Median Income.” “Near-elderly persons,” “Nonprofit,” “Recipient,” “Secretary,” “State,” and “Tribally designated housing entity (TDHE)” are defined in section 4 of NAHASDA.

(b) In addition to the definitions set forth in paragraph (a) of this section, the following definitions apply to this part:

[Skip to and then omit the following]

~~Median income for an Indian area is the greater of:~~

- ~~—— (1) The median income for the counties, previous counties, or their equivalent in which the Indian area is located; or~~
- ~~—— (2) The median income for the United States.~~

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

[Skip to and then omit the following]

~~Formula Median Income. 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).~~

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

<p>TAB 3: [Former #6, #26, #31, #32, & #34]</p>	<p>Small Program/Minimum Funding</p>
	<p>The proposal was first introduced on 08/20/2003. Scenarios were developed for data runs. Additional proposals submitted 09/25/2003.</p>
<p>This proposal was first introduced as a resolution from the Nevada California Indian Housing Association, titled “Resolution No. 2003-05: Establishing a Position for Baseline or Minimum Funding under the NAHASDA IHBG Formula.” There was also a recommendation to address the issue reported out from the Needs Workgroup with conceptual language. To date, there is no regulatory language associated with the proposals.</p> <p>Additional recommendations were voiced during Committee discussion for: minimum \$25,000; minimum \$50,000; and maximum funding.</p>	
<p>Reference Documents:</p> <p>TSB: #6, #26, #31, #32, #34</p> <p>TR: #11, #23, #27, #29, #33, #44, #56, #57, #58, #59, #60, #61, #62, #69, #70, #71, #72, #73, #74, #75, #76, #77, #78, #82, #83</p>	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

[Issue #3]
PROPOSED REGULATION
FOR
A SMALL TRIBE'S SUPPLEMENTAL GRANT PROGRAM
by
Jack Sawyers

§ 1000.350 What is the IHBG Small Tribe Supplemental Grant Program?

To supplement grant funding to small tribes each year _____% of Indian Housing Block Grant or \$10 million dollars, which ever is smaller, shall be distributed to eligible small tribes as Supplemental Grant funding. In addition to special Supplemental Grant requirements, all other rules of the NAHASDA Block Grant Program shall apply except where they conflict with the regulations of the Supplemental Grant Program.

§ 1000.352 Who is Eligible for Supplemental Grants?

Funds are to be provided to the smallest tribes eligible for Indian Housing Block Grants. However, to be eligible a tribe must first submit a Supplemental Grant Application with its Indian Housing Plans on a form prescribed by HUD. In addition to demonstrating a desire for Supplemental funding, this form is to be used by tribes to make a showing of both housing need and administrative capacity which must then be concurred in and certified by HUD before the Supplemental Grant can be awarded to the tribe. Accomplishing these qualifications makes a tribe eligible for Supplemental funding.

§ 1000.354 What Are the Supplemental Grant Amounts?

HUD will annually award Supplemental Grants in the amount of \$100,000 upon a HUD determination certifying housing need and administrative capacity for that tribe. Grants shall be given to the tribes with lowest funding first and continue until this funding pool is exhausted. If a tribe is receiving more than \$500,000 in current assisted stock funding it shall not receive any funding from this program. Furthermore, if a tribe is participating in a regional or umbrella housing authority whose participating members and regional authority annually receive in NAHASDA Block Grants (in need and current assisted stock) a total of more than \$1 million dollars, the Supplemental Grant to that tribe shall be \$50,000, and if the participating member's regional authority annually receive a total of more than \$4 million dollars, the Supplemental Grant to that tribe shall be \$25,000.

January 8, 2004

Citizen Potawatomi Nation Housing Authority

Minimum Funding Proposal

Unclaimed NAHASDA grant funds from the prior grant year and funds repaid to HUD from the prior grant year under repayment agreements shall be placed in a separate fund and allocated among tribes with a demonstrated need for funding based on administrative need that is not met by the formula for allocating funds. These funds shall be distributed among Tribes that receive less than \$100,000 annually in IHBG funds. The method and terms of distribution shall be determined through negotiations between the Tribes eligible for these funds.

Tab 3 ~ Proposed Regulation for Minimum Funding

Prepared and Submitted by: Phil Bush

1000.328 ~ What is the minimum annual IHBG amount a Tribe can receive?

Answer:

If an Indian tribe has no demonstrated need, under the need component, then the minimal funding is set at \$25,000.00.

If an Indian Tribe demonstrates that it has households below 80% of the median income within the Tribe's formula area, and the tribe's IHBG need allocation is less than \$225,000.00, then the tribe's need allocation will be adjusted to a minimum funding level of \$225,000.00.

An Indian Tribe that receives \$500,000.00 or less under the current assisted housing stock (CAHS) portion of the formula, is eligible for this allocation.

An Indian Tribe that receives CAHS funding greater than \$500,000.00, is not eligible for this allocation.

Any Tribe's annual IHBG funded allocation less the \$500,000.00 shall not be affected by this rule.

Tab 3 ~ Proposed Regulation for Minimum Funding

Prepared and Submitted by: Phil Bush

1000.----What happens if data sources for the IHBG formula are not available for a Tribe?

In the event the Tribe data sources are not available from the U.S. Decennial Census or any other source, the Tribe may have an opportunity to request from HUD up to \$50,000.00 to gather data acceptable to HUD to demonstrate and justify the affordable housing need formula allocation for the Tribe.

What is the minimum IHBG amount that a Tribe may receive under the need component of the formula?

The minimum block grant allocation in any year to a Tribe under the need component of the NHASDA allocation formula shall equal .019% of the total block grant need distribution for that year, provided that any Tribe receiving \$500,000.00 or more in FCAS funding shall not be eligible for this supplemental allocation, and provided further that a Tribe must demonstrate need of any households at or below 80% of median income to be eligible for this block grant minimum funding level.

IHBG Formula Negotiated Rulemaking Proposals from the Cherokee Nation (January 9, 2004)

Note: Any notations below of “...” indicates that language remains as written in the current language.

TAB 3: MINIMUM FUNDING PROPOSAL

Replace the third sentence in 1000.328 with:

In subsequent years, an Indian tribe whose allocation is less than \$25,000 under the need component of the formula shall have its need component of the grant adjusted to \$25,000 if its calculated FCAS amount for that year is less than \$100,000 and it provides a certification of need for the adjusted amount.

Remove the fourth sentence.

[Issue #3]
MINIMUM FUNDING
by
Darlene Tooley

§ 1000.323 What is the minimum amount an Indian tribe can receive under the need component of the formula?

In the first year of NAHASDA participation, an Indian tribe whose allocation is less than \$50,000 under the need component of the formula shall have its need component of the grant adjusted to \$50,000. An Indian tribe's IHP shall contain a certification of the need for the \$50,000 funding. In subsequent years, an Indian tribe whose allocation is less than \$25,000 under the need component of the formula shall have its need component of the grant adjusted to \$25,000.

Rationale: Under the current regulation, minimum funding expired at the end of fiscal year 2002. HUD by interim regulation, published in the Federal Register on June 24, 2003, extended the current minimum funding through fiscal year 2003, after which there will be no minimum funding under the regulations. This proposal is submitted to extend the current rule indefinitely, if no other minimum funding proposal is adopted by the Negotiated Rule Making Committee.

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

<p>TAB 4: [Former #12]</p>	<p>Averaging 1992 – 97 CIAP funding as provided in the 2000 amendment language formula</p>
	<p>The proposal was first introduced on 08/19/2003. The proposal was tabled. The date was then changed in the language to October 1, 1997. The language was determined to be unclear and may not align with intent. HUD will research and get an opinion. The issue is tribes not getting any funding, which was not the intent.</p>
<p>Language was proposed and revised on 08/19/2003.</p>	
<p>Reference Documents:</p> <p>TSB: Tab 12</p> <p>TR: #47, #51</p>	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

[Issue #4]
PROPOSED REGULATION
FOR
CIAP AVERAGING
by
HUD

This implements the statute by choosing October 1, 1997, as the date for counting whether an IHA had 250 or more units. This change will give tribes a modernization allocation of the higher of their 6-year average or the existing modernization calculation. Then it keeps the old provision to ensure that no tribe's total grant falls below its total 1996 allocation for operating subsidy and modernization.

§ 1000.316 How is the Formula Current Assisted Stock (FCAS) Component Developed?

[skip to following section]

(b) *Modernization allocation.*

(1) For tribes with an Indian Housing Authority that owned 250 or more public housing units on October 1, 1997, the modernization allocation consists of the number of Low Rent, Mutual Help, and Turnkey III FCAS units multiplied the national per unit amount of allocation for FY 1996 modernization multiplied by an adjustment factor for inflation.

(2) For tribes with an Indian Housing Authority that owned or operated fewer than 250 public housing units on October 1, 1997, the modernization allocation equals the average amount of funds received under the assistance program under Section 14 of the United States Housing Act of 1937 (other than funds provided as emergency assistance) for Fiscal Years 1992-1997.

§ 1000.340 What if an Indian tribe is allocated less funding under the block grant formula than it received in Fiscal Year 1996 for operating subsidy and modernization?

(a) If an Indian tribe is allocated less funding under the modernization allocation of the formula than the number of Low Rent, Mutual Help, and Turnkey III FCAS units multiplied the national per unit amount of allocation for FY 1996 modernization multiplied by an adjustment factor for inflation, its modernization allocation is increased to the amount received in Fiscal Year 1996 for operating subsidy and modernization. The remaining grants are adjusted to keep the allocation within available appropriations.

(b) If an Indian tribe is allocated less funding under the formula than an IHA received on its behalf in Fiscal Year 1996 for operating subsidy and modernization, its grant is increased to the amount received in Fiscal Year 1996 for operating subsidy and modernization. The remaining grants are adjusted to keep the allocation within available appropriations.

[Issue #4]

**COMMENTS BY DARLENE TOOLEY ON
PROPOSED REGULATIONS
FOR
CIAP AVERAGING
by
HUD**

HUD states that its proposed regulation “. . . implements the statute by choosing October 1, 1997, as the date for counting whether an IHA had 250 or more units. This change will give tribes a modernization allocation of the higher of their 6-year average or the existing modernization calculation. Then it keeps the old provision to ensure that no tribe’s total grant falls below its total 1996 allocation for operating subsidy and modernization.”

I support the goal, but I don’t think the regulation as drafted accomplishes it.

I find proposed Section 1000.340(a) somewhat ambiguous, because it refers to funding “under the modernization allocation of the formula,” when I believe the reference should be more specific to the modernization allocation as determined under Section 1000.316(b)(2).

Assuming that more specific reference was intended, I interpret proposed Section 1000. 340(a) as providing tribes with the greater of the modernization allocation computed under 1000.316(b)(2) (the six-year averaging method for tribes with IHAs owning less than 250 units) or the amount received on behalf of that Tribe in FY 1996 for operating subsidy and modernization, rather than the amount allocated under the modernization allocation formula in 1000.316(b)(1) (the method used for IHAs owning 250 units or more, multiplying number of units by average per unit modernization amount in FY 1996 by an inflation factor) .

To achieve the goal stated by HUD, I believe Section 1000.340(a) should be revised to read as set forth below. I include both regulations as proposed by HUD with my suggested revision.

§ 1000.316 How is the Formula Current Assisted Stock (FCAS) Component Developed?

[skip to following section]

(b) *Modernization allocation.*

(1) For tribes with an Indian Housing Authority that owned 250 or more public housing units on October 1, 1997, the modernization allocation consists of the number of Low Rent, Mutual Help, and Turnkey III FCAS units multiplied by the national per unit amount of allocation for FY 1996 modernization multiplied by an adjustment factor for inflation.

(2) For tribes with an Indian Housing Authority that owned or operated fewer than 250 public housing units on October 1, 1997, the modernization allocation equals the average amount of funds received under the assistance program under Section 14 of the United States Housing Act of 1937 (other than funds provided as emergency assistance) for Fiscal Years 1992-1997.

§ 1000.340 What if an Indian tribe is allocated less funding under the block grant formula than it received in Fiscal Year 1996 for operating subsidy and modernization?

(a) If an Indian tribe is allocated less funding under the modernization allocation formula as set forth in Section 1000.316(b)(2) than the amount it would receive under the modernization allocation formula set forth in Section 1000.316(b)(1), then its modernization allocation is increased to the amount calculated using the formula in Section 1000.316(b)(1).

The remaining grants are adjusted to keep the allocation within available appropriations.

(b) If an Indian tribe is allocated less funding under the formula than an IHA received on its behalf in Fiscal Year 1996 for operating subsidy and modernization, its grant is increased to the amount received in Fiscal Year 1996 for operating subsidy and modernization. The remaining grants are adjusted to keep the allocation within available appropriations.

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

TAB 5: [Former #28]	Section 8
	The proposal was first introduced on 09/22/2003
There was a recommendation voiced during Committee discussion to address Section 8 as an issue. To date, there is no regulatory language associated with this recommendation.	
Reference Documents: TSB: #28 TR: #9, #20, #30, #31	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

[Issue # 5]
Proposal A
PROPOSED REGULATION FOR ELIMINATING SECTION 8
INFLATION FACTOR FROM FCAS
By Larry Coyle

1000.316 How is the Formula Current Assisted Stock (FCAS) Component developed?

....

(a) (2) *Notwithstanding any other provision of these regulations*, the number of Section 8 units whose contract has expired but had been under contract on September 30, 1997, multiplied by the FY 1996 national per unit subsidy ~~adjusted for inflation~~; and

[Issue # 5]
Proposal B
PROPOSED REGULATION FOR ELIMINATING SECTION 8
INFLATION FACTOR FROM FCAS
By Larry Coyle

1000.316 How is the Formula Current Assisted Stock
(FCAS) Component developed?

....

(a)(2) *Notwithstanding any other provision of these regulations*, the number of Section 8 units whose contract has expired but had been under contract on September 30, 1997, multiplied by the FY 2003 national per unit subsidy ~~adjusted for inflation~~; and

IHBG Formula Negotiated Rulemaking Proposals from the Cherokee
Nation (January 9, 2004)

Note: Any notations below of “...” indicates that language remains as written in the current language.

TAB 5: SECTION 8 PROPOSAL

Change 1000.318(2)(c) to read:

Expired contract Section 8 units shall continue as FCAS units when utilized in the manner described in [Section]1000.314.

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

TAB 6: [Former #30]	Appeals Process
	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.	
Reference Documents: 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.

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

TAB 7: [Former #19]	Formula Area Definitions
	The proposal was first introduced on 08/20/2003
This proposal was submitted by the Needs Workgroup as “Formula Area Definitions” with associated language on 08/20/2003. The language has been revised in Committee.	
Reference Documents:	
TSB: #19	
TR: #14, #39	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

[Issue # 7]

**PROPOSED REGULATION FOR FORMULA AREA
DEFINITION**

(For insert at Paragraph (3) to Committee work product on Section 302)

**Section 1000.302 What are the definitions applicable
to the IHBG formula?**

Insert at Section 1000.302, definition of Formula area, as
new paragraph (3) :

(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 (ANV), 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 formula area of the ANV shall be the geographic area of the village or that area delineated by the Tribal Designated Statistical Area established for the ANV for purposes of the 1990 census or Alaska Native Village Statistical Area (ANVSA) established for the ANV. To the extent the area encompassed by such designation may substantially exceed the actual geographic area of the village, such designation is subject to challenge pursuant to section 1000.336. If the ANVSA

or the TDSA is determined pursuant to such challenge to substantially exceed the actual area of the village, then the geographic formula area of the ANV for purposes of § 1000.327 shall be such census designation as most closely approximates the actual geographic area of the village.

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

(iii) ~~An ANVA tribe~~ may seek to expand its Alaska formula area within its ANCSA region pursuant to the procedures set out in paragraph 2 of this section. Formula area added in this way shall be treated as overlapping pursuant to section 1000.326 ~~except that~~ unless the proportion of the tribe's members in the expanded area is less than 50% of the AIAN population. In cases where the tribe is not treated as overlapping, the tribe shall be credited ~~the ANV shall be credited~~ with population and housing data only for its own tribal members resident within the new or added area. All other housing and population data for the area shall remain with the tribe or tribes previously credited with such data.

IHBG Formula Negotiated Rulemaking Proposals from the Cherokee
Nation (January 9, 2004)

Note: Any notations below of “...” indicates that language remains as written in the current language.

**TAB 7: FORMULA AREA DEFINITION
PROPOSAL; ALSO A TAB 18: STATE TRIBES
FUNDING PROPOSAL; AND, INDIRECTLY, A
TAB 11: MULTIPLE RACE PROPOSAL**

Change 1000.302 to:

Formula area. (3) In some cases...its tribal enrollment in the formula area. In general, ...an Indian tribe’s enrolled population in the formula area.

Remove the rest of (3) and (4)

Replace (4) with: Notwithstanding (3) above, an eligible state-recognized Indian tribe’s population data may not exceed its tribal enrollment established under membership criteria in effect as of October 1, 1996 and within its formula area as of October 1, 1996.

[Issue # 7]
PROPOSED REGULATION FOR FORMULA AREA DEFINITION
Committee Work Product with Additional Change
by
Jack Sawyers

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

[amend the following definition]

Formula area. (1) Formula areas are:

- (i) Reservations for Federally recognized Tribes, as defined by the Census;
- (ii) Trust lands;
- (iii) Department of the Interior Near-Reservation Service Area;
- (iv) Former Indian Reservation Areas in Oklahoma Indian Areas, as defined by the Census as Oklahoma Tribal Statistical Areas (OTSAs) [*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) *as of 1996*;
- (vii) tribal Designated Statistical Areas (TDSAs); and
- (viii) California Tribal Jurisdictional Areas established or reestablished by Federal court judgment.

(ix) For any *federally recognized* tribe assigned Formula Area geography in Fiscal Year 2003 not identified in paragraphs (1) and (2) of this definition, the Indian tribe shall continue to be assigned such Formula Area in subsequent Fiscal Years.

(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 agreed to 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 planning to provide, or is providing, substantial housing services and will continue to expend or obligate funds for substantial housing services as reflected in the form agreed to by HUD for this purpose.

(ii) Upon receipt of a request for recognition of a geographic area not identified in paragraph (1) of this definition, HUD shall make a preliminary determination. HUD shall notify all potentially affected tribes of the basis for its preliminary determination by certified mail and provide the tribes with the opportunity to comment for a period of not less than 90 days. After consideration of the comments, HUD shall announce its final determination through *Federal Register* notice.

(3) Alaska needs data shall be credited as set forth in § 1000.327 to the Alaska Native Village (ANV), 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 formula area of the ANV shall be geographic area of the village or that area delineated by the Tribal Designated Statistical Area established for the ANV for purposes of the 1990 census or the Alaska Native Village Statistical Area (ANVSA) established for the ANV. To

the extent the area encompassed by such designation may substantially exceed the actual geographic area of the village, such designation is subject to challenge pursuant to section 1000.336. If the NAVSA or the TDSA is determined pursuant to such challenge to substantially exceed the actual area of the village, then the geographic formula area of the ANV for purposes of § 1000.327 shall be such census designation as most closely approximates the actual geographic area of the village.

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

(iii) An ANV seeking to expand its Alaska formula area pursuant to the procedures set out in paragraph 2 of this section would be subject to provisions in section 1000.326.

(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 Federally recognized Indian tribes, the population data will not be allowed to exceed twice a Federally recognized Indian tribe's enrolled population. However, a Federally recognized 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 substantial housing services to substantially more non-member Indians and Alaska Natives who are members of another Federally recognized Indian tribe than it is to members. For state-recognized tribes, the population data and formula allocation shall be limited to their tribal enrollment figures as determined under enrollment criteria in effect in 1996.

(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 substantial housing services (on July 30 of the year before funding is sought) divided by the number of members the Indian tribe is providing housing assistance. 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 for 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.

...

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

TAB 8: [Former #17, #18, #20, & #21]	Overlapping Area and Substantial Housing Services
	The proposal was first introduced on 08/20/2003
Proposals were introduced separately by the Needs Workgroup as “Overlapping Area Definition (§1000.326) and “Development of Definition of Substantial Housing Services” (§1000.302) with regulatory language. The language has been revised in Committee.	
Reference Documents: TSB: #17, #18, #20, #21 TR: #34	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

IHBG Formula Negotiated Rulemaking Proposals from the Cherokee Nation (January 9, 2004)

Note: Any notations below of “...” indicates that language remains as written in the current language.

TAB 8: OVERLAPPING AREA PROPOSAL

Change 1000.326(b) to:

Tribal membership...Suggested data sources include the U.S. Decennial Census, tribal enrollment lists, ...

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

<p>TAB 9: [Former #2, #8, & #9]</p>	<p>AEL: Addressing current inequities in the formula's AEL factor by establishing the national AEL average as a baseline; AEL challenge process #1; AEL challenge process #2 (with cap)</p>
	<p>The proposals were first introduced on 08/18/2003 and 08/19/2003. Both former #8 & #9 were rejected on 08/20/2003, at which time the committee could not reach consensus on how a successful challenge would be funded (CAS or Need).</p>
<p>A proposal was submitted by UNAHA titled "Addressing Current Inequities in the Formula's AEL Factor by Establishing the National AEL Average as a Baseline." Proposals were also submitted by the Formula CAS Workgroup with associated regulatory language.</p>	
<p>Reference Documents:</p> <p>TSB: #2, #8, #9</p> <p>TR: #15, #21, #26, #40</p>	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

[Issue #9]
PROPOSED REGULATION
FOR
CHANGES TO AEL FACTOR IN FORMULA
by
Jason Adams

§ 1000.320 How is Formula Current Assisted Stock adjusted for local area costs?

There are two adjustment factors that are used to adjust the allocation of funds for the formula. They are:

(a) Operating Subsidy as adjusted by the greater of the of the following:

(1) Individual AEL factor;

(2) National average AEL factor without changing the denominator in the formula originally fixed; or

(3) FMR factor; and

(b) Modernization as adjusted by TDC.

OR

§ 1000.320 How is Formula Current Assisted Stock adjusted for local area costs?

There are two adjustment factors that are used to adjust the allocation of funds for the formula. They are:

(a) Operating Subsidy as adjusted by the greater of the AEL factor or FMR factor (AELFMR) with tribes and TDHEs being able to challenge both the AEL and FMR factors; and

(b) Modernization as adjusted by TDC.

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

TAB 10: [Former# 24]	Alternative data sources
	The proposal was first introduced on 08/20/2003
A recommendation to address the issue was submitted by the Needs workgroup as “Alternative Data Sources.” To date there is no regulatory language associated with this recommendation.	
Reference Documents: TSB: #24 TR: #46, #54	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

[Issue #10]

**PROPOSED REGULATION
FOR
ALTERNATIVE DATA SOURCE
by
Wayne Ducheneaux**

§ 1000.330 What are the data sources for the needs variables?

The sources of data for the needs variables shall be data that is available that is collected in a uniform manner that can be confirmed and verified for all AIAN households and persons living in a Formula Area. Each Tribe shall determine which of the following data shall be used for the needs variables:

- (1) A Tribal Census certified by the Tribe and/or other data accepted by HUD, both subject to 24 C.F.R. §1000.336;
- (2) Indian Health Service active user population data for the Formula Area;
- (3) Tribal enrollment living within the Formula Area as certified by the Tribe. If a Tribe chooses to submit data from subparagraph 2 or 3, HUD shall apply the average household size per the U.S. Decennial Census for the Formula Area to arrive at the number of AIAN households for the Formula Area. HUD will then apply the percentage of AIAN households meeting the criteria for each need variable based on household information per the U.S. Decennial Census for that need variable and apply such percentage to the AIAN household information to determine the number of AIAN households credited to the Tribe for each need variable; and
- (4) U.S. Decennial Census

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

TAB 11: [Former #27]	Multiple race
	The proposal was first introduced on 09/22/2003
A recommendation was voiced during Committee discussion to address multiple race as an issue. To date there is no regulatory language associated with this recommendation.	
Reference Documents:	
TSB: #27	
TR: #45, #48, #55, #63, #79, #80, #81	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

[Issue #11]
PROPOSED REGULATION
FOR
AIAN (AND MIX RACE)
by
Jason Adams

§ 1000.331 What AIAN households and AIAN persons data shall be used in the formula component?

For purposes of the IHBG formula, American Indian and Alaskan Native (AIAN) households and persons shall be the average of:

- (a) American Indian or Alaska Native only; and
- (b) American Indian or Alaska Native only and AIAN and one or more other race.

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

TAB 12: [Former #29]	Data Challenge
	The proposal was first introduced on 09/22/2003
A recommendation was submitted to address data challenge was submitted. To date there is no regulatory language associated with this recommendation.	
Reference Documents:	
TSB: #29	
TR: #38	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

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.

(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

(ii) If HUD prevails, it shall issue a written decision. HUD's written decision denying the Indian tribe or TDHE's petition for reconsideration constitutes final agency action.

(c) In the event HUD questions that 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.

[Issue #12]
PROPOSED REGULATION
FOR
TDC CHALLENGE PROCESS
by
Wayne Ducheneaux

§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. The challenge and the collection of data and the challenge of HUD IHBG formula determinations are 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) contends that HUD has made an erroneous IHBG formula determination, 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 June 15. HUD shall respond to such data submittal 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 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 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) 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 procedures set forth in this regulation.

(5) 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

(ii) If HUD prevails, it shall issue a written decision. If the decision results in the reduction, withdrawal or adjustment of a TDHE's or Tribe's IHBG funding in the current or a future year in the amount of at least \$50,000 or 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 §1000.336 and §1000.118 where applicable, the Tribe or TDHE shall be entitled to a

hearing pursuant to §1000.540. If such criteria are not met, HUD's written decision denying the Indian tribe or TDHE's petition for reconsideration shall constitute 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.

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

<p>TAB 13: [Former #3 & #13]</p>	<p>Low-Income Weighting: The weighting of the formula need components should be changed to better reflect both the need of low-income families and the stated purpose of the act; Continued use of Need variables and weights</p>
	<p>The proposals were first introduced on 08/18/2003 and 08/20/2003</p>
<p>A proposal was submitted by UNAHA titled “the Weighting of the Formula Need Components Should be Changed to Better Reflect Both the Need of Low-Income Families and the Stated Purpose of the Act.” A recommendation to address the issue was also submitted by the Needs Workgroup as “Existing Formula Variables and their Weights.” To date there is no regulatory language associated with these proposals.</p>	
<p>Reference Documents:</p> <p>TSB: #3, #13</p> <p>TR: #18, #19, #35, #48, #49, #52, #53</p>	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

TAB 14: [Former #14]	Continued inclusion of Housing Shortage Variable , and if so, addition of Section 8 and NAS units
	The proposal was first introduced on 08/20/2003
A recommendation was reported out of the Needs Workgroup as “Inclusion of Housing Shortage Variable.” To date there is no regulatory language associated with this proposal.	
Reference Documents:	
TSB: #14	
TR: #19, #35, #42, #49, #50, #52, #53	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

[Issue #14]
PROPOSED REGULATION
FOR
HOUSING SHORTAGE VARIABLE
By
Jack Sawyers

§ 1000.324 How is the need component developed?

After determining the FCAS allocation, remaining funds are allocated by need component. The need component consists of seven criteria. They are:

(a) American Indian and Alaskan Native (AIAN) Households with housing cost burden greater than 50 percent of [formula] annual income weighted at 22 percent;

(b) AIAN Households which are overcrowded or without kitchen or plumbing weighted at 25 percent;

(c) Housing Shortage which is the number of AIAN households with an annual income less than or equal to 80 percent of [formula] median income reduced by formula current assisted stock weighted at 15 percent;

(d) AIAN households with annual income less than or equal to 30 percent of formula median income weighted at 13 percent;

(e) AIAN households with annual income between 30 percent and 50 percent of formula median income weighted at 7 percent;

(f) AIAN households with annual income between 50 percent and 80 percent of formula median income weighted at 7 percent;

(g) AIAN persons weighted at 11 percent.

[amend appendices A & B accordingly]

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

TAB 15: [Former # 16]	Separating and/or deleting Overcrowding and Lack of Plumbing
	The proposal was first introduced on 08/20/2003
A recommendation was reported out of the Needs Workgroup as “Separating and/or Deleting Variable Regarding Overcrowding and Lack of Plumbing.” To date there is no regulatory language associated with this proposal.	
Reference Documents: TSB: #16 TR: #48	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

TAB 16: [Former #7 & #10]	Keep CAS formula as is Establishing a position to support that the CAS side of the formula under the NAHASDA IHBG formula does not decrease
	The proposals were first introduced on 08/18/2003 and 08/19/2003
<p>A proposal was submitted by the Nevada California Indian Housing Association titled “Resolution No. 2003-06: Establishing a Position to Support that the Current Assisted Stock Side of the Formula Under the NAHASDA IHBG Formula Does Not Decrease.” A recommendation was also reported out of the Formula CAS Workgroup titled “CAS Portion of the Formula.” This proposal was to keep CAS formula as is. To date, there is no regulatory language associated with these proposals.</p>	
<p>Reference Documents:</p> <p>TSB: #7, #10</p>	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

TAB 17: [Former #15]	TDC
	The proposal was first introduced on 08/20/2003
A recommendation was reported out of the Needs Workgroup titled "Total Development Cost." To date there is no regulatory language associated with this proposal.	
Reference Documents:	
TSB: #15	
TR: #4, #5, #13, #23, #27	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

[Issue #17]
TDC CHALLENGE PROCESS PROPOSAL
by
Wayne Ducheneaux

1000.336 How may an Indian Tribe, TDHE, or HUD challenge data?

An Indian tribe, TDHE or HUD may challenge data used in the IHBG formula. An Indian tribe, TDHE, or HUD may challenge any data used pursuant to §1000.330, as well as data calculated by HUD to arrive at the Total Development Cost for each Tribe using the procedures set forth in this section. The challenge and collection of data for this purpose is an allowable cost for IHBG funds.

IHBG Formula Negotiated Rulemaking Recommendations and Proposals

TAB 18: [Former #22]	Eligibility of state tribes for funding
	The proposal was first introduced on 08/20/2003
The recommendation was reported out of the Needs Workgroup as “Eligibility of State Tribes for Funding.” To date there is no regulatory language associated with the proposal.	
Reference Documents: TSB: #22 TR: #36, #64	

Referenced Documents:

TR = Technical Request; TSB = Tab in September Binder

IHBG Formula Negotiated Rulemaking Proposals from the Cherokee
Nation (January 9, 2004)

Note: Any notations below of “...” indicates that language remains as
written in the current language.

**TAB 18: ELIGIBILITY OF STATE TRIBES FOR FUNDING
PROPOSAL**

MOVED FROM TAB 7

Change 1000.302 to:

Replace (4) with: Notwithstanding (3) above, an eligible
state-recognized Indian tribe’s population data may not
exceed its tribal enrollment established under membership
criteria in effect as of October 1, 1996 and within its
formula area as of October 1, 1996.