

## IHBG Formula Negotiated Rulemaking Recommendations and Proposals

<b>TAB 12:</b> <b>[Former #29]</b>	<b>Data Challenge</b>
	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.	
<b>Reference Documents:</b>	
<b>TSB: #29</b>	
<b>TR: #38</b>	

**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.