



Summary of Needs-Related Issues from Negotiated Rulemaking Session #4

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Summary of Issues Arising in Needs Work Group

1. Initial Discussion of Data Source by Entire Committee

The initial discussion of the IHBG formula data source was driven by Committee members who wanted to focus on specific examination of the American Community Survey, which is an ongoing survey conducted by the Census Bureau that replaced the long form of the decennial census. Certain members of the Committee asked whether, despite its current deficiencies, ACS could be “tweaked” or modified to better meet the needs of the IHBG Formula and its tribal recipients. One Committee member noted that tribes and Committee members should make their concerns regarding ACS known to Congress sooner rather than later to inform Congress of the specific basis for their objections. Assistant Secretary Sandra Henriquez noted that the HUD study of alternate data sources mandated in the NAHASDA statute (Section 302) was never funded by Congress and also asked whether modifications could be made to ACS that would be satisfactory to tribes. The issue regarding the use of an inappropriate definition of American Indian or Alaska Native on both the decennial census and ACS forms was not directly addressed. Several Committee members noted the need for further technical assistance regarding ACS and all other existing and potential data sources before they could make informed decisions.

Despite the initial push to focus the examination purely on ACS, members of UNAHA on the Committee and others reaffirmed their desire to revisit the data source issue and explore all available data sources as was the intent of the original Formula Negotiated Rulemaking Committee. It was commonly accepted and stated by many members that any final data source proposal must, to the extent possible, limit financial shocks, or immediate and significant negative impacts, to tribal housing programs. Several members requested a specific inquiry into how or why the “poorest” or most disadvantaged tribes lost funding in the ACS data simulation. In fact, Committee members from multiple regions voiced a need or desire to clearly understand why the “winners were winners and losers were losers” as a result of potentially incorporating a new data source into the formula. In response to proposals to either freeze IHBG grant amounts or continue the use of current formula data, one of HUD’s attorneys noted that, although HUD had tremendous flexibility with respect to the data set or source used in the formula, it could not freeze formula percentages or grant amounts without

prior regulatory or statutory change. However, a decision to simply continue using 2000 Census data (as proposed in the section below) would require no regulatory change at all.

2. Data-Related “Concept” Approved by the Committee

In an effort to address the various data and funding-related concerns voiced by Committee members, the Needs Work Group put forward a concept (not a full-fledged proposal due to a lack of proposed regulatory language) that was approved by the Committee, which called for the data source to remain the same for three grant cycles, a study of alternate data sources to be conducted and a “volatility control” to be put in place to cap the annual needs-based losses for a recipient. The concept essentially states that:

- a. The current 2000 Census data will continue to be used for FY 2015-2017 and no new data source will be implemented during that time,
- b. If and when a new data source is selected, no recipient will receive less than 90% of their prior year’s need-based grant amount and each successive year’s grant amount may only be reduced by an additional 10% until the final grant amount represents the amount established by the new data source (Note: other non-data source factors may offset or increase the grant amount reduction as the 10% annual reduction limit will only apply to changes caused by the new data source),
- c. The Committee will commence a data study led by a new Data Study Group to be comprised of voting Committee members and any other non-voting participants, which will examine all available data sources for the IHBG formula, will not exceed 12 months in length and will serve as the basis for the Committee’s final consideration of alternate data sources for the IHBG formula.

In addition, the concept sets forth some guiding principles regarding data source selection which require a balancing of the recognition of tribal needs, equity among tribes, minimization of disruption to tribal housing programs, recognition of tribal sovereignty and practicality, including cost.

In essence, no recipient will gain or lose IHBG grant funding as a result of a new data source being utilized by HUD for the next three grant cycles. If and when a new data source is selected, no recipient will suffer more than a 10% needs-based grant loss in any one grant cycle (and “winners” gains will be slightly reduced to balance out the funds that would have been lost by the “losers.”)

The Needs Work Group must still identify the following features of the Data Study Group:

- a. the data source-related materials to be prepared in advance of the next two Negotiated Rulemaking sessions,
- b. the source(s) of funding for the Study Group following the currently scheduled Negotiated Rulemaking sessions,
- c. the dates and format for Study Group meetings (e.g., in-person meetings vs. conference calls)
- d. the range and identity of technical experts who will be invited to contribute their expertise,
- e. the specific questions to be answered or issues to be addressed by the Study Group and/or its technical experts,
- f. the desired outcomes/products of the study group and any training/educational sessions to be provided to Committee members, and
- g. the specific method for review, presentation and consideration of Study Group materials and findings.

Due to the impact of the proposed concept/future proposal on the formula and the scope of the Committee's work, the Drafting Committee (comprised of lawyers, technical experts and Committee Members) must also still develop language for a proposed rule or regulation that captures the purpose, intent and spirit of the approved concept.

3. Census Challenges

Prior to folding this issue into the Data Study addressed above, the Needs Work Group also separately addressed the barriers to completing census challenges within the current statute and regulations. Given certain recipients' objections to the questions asked by the Census Bureau, the group worked on potential regulation language that would allow recipients to ask questions that are different but "functionally equivalent" to census questions in order to collect more accurate data in Indian Country. Additionally, discussion of the specific sampling and methodology of the American Community Survey illustrated that structuring census challenges may be much more complex if and when ACS aggregated yearly estimate data is incorporated into the formula and inevitably challenged as challenges would likely need to address sampling methodology, respondent contact procedures, nonresponse and imputation rates and other issues which are more complicated than simply challenging complete housing and population counts in a point-in-time census and sample.

Recommendations

UNAHA and its members will need to ensure that, regardless of the format chosen for meetings of the Data Study Group, several of its members remain active participants and have the technical support that they need to develop and respond to proposals and process the high volume of materials generated by the technical experts at the request of the Study Group members. While the "concept" approved by the Committee establishes a grace period before the implementation of a new data source, and limits the extent of the immediate impacts of the new data on recipients' grant amounts, the members of UNAHA will need to be prepared to recommend alternate data sources for consideration and address any concerns they might have regarding ACS or other data sources considered by the Data Study Group or the Committee. Much of this background work will have to take place between sessions.

While other tribes and regions may share certain interests or concerns with UNAHA and its members, this region cannot afford to rely upon those groups to fully represent their interests, share their knowledge and hard-earned research and advocate on UNAHA's behalf. As responses to TA requests submitted by Committee members begin to be posted by HUD and Firstpic, UNAHA and its members must have the independent technical support necessary to determine the meaning and impact of the information contained in those responses and how that information affects their negotiating strategies. In addition to support at Negotiated Rulemaking sessions, the membership should consider hosting a separate region-specific training session conducted by UNAHA's technical and legal experts to address the mechanics of the IHBG Formula, American Community Survey, decennial census and other data sources and collection methods. However, while technical support is essential, no amount of support can match the significance of having an active, involved, informed and vocal membership at Negotiated Rulemaking sessions and participation in regional meetings should not replace members' attendance of the sessions themselves.