

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-5055-N-01]

**Use of Census Data in the IHBG
Program**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: Senate Report 109-109, which accompanied HUD's Fiscal Year (FY) 2006 appropriations act, provides for HUD to reassess through notice and comment rulemaking its use of multi-race data in the computation of the Need component of the Indian Housing Block Grant (IHBG) program allocation formula. Through the IHBG program, HUD provides Federal housing assistance to Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. Consistent with the language of Senate Report 109-109, this notice solicits public comment on HUD's use of multi-race data in the computation of the IHBG program allocation formula. Following HUD's review and consideration of the comments received, HUD may proceed with additional rulemaking as necessary.

DATES: *Comment Due Date:* February 12, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons may also submit comments electronically through the Federal electronic rulemaking portal at: www.regulations.gov. HUD strongly encourages commenters to submit comments electronically in order to make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not acceptable. All communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Divisions at (202) 708-3055 (this is not a toll-free number).

Copies of the public comments submitted are also available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW., Room 4126, Washington, DC 20410-5000; telephone 202-401-7914 (this telephone number is not toll-free). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Senate Report 109-109, which accompanied the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109-115; approved November 30, 2005), provides for HUD to reassess through "notice and comment rulemaking" its use of multi-race data in the computation of the Need component of the IHBG program allocation formula. Through the IHBG program, HUD provides Federal housing assistance to Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. HUD's regulations for the IHBG program, which were developed with active tribal participation using negotiated rulemaking procedures, are located at 24 CFR part 1000.

As authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), this program provides an allocation of funds on a formula basis to Indian tribes or their tribally designated housing entities to help them address the housing needs within their communities. The formula, which was developed as part of the negotiated rulemaking process, consists of two components—Need and Formula Current Assisted Stock (FCAS). A regulatory description of the formula is located in subpart D of 24 CFR part 1000 (§§ 1000.301-1000.340).

Generally, the amount of funding for a tribe is the sum of the formula's Need component and the Formula Current Assisted Stock (FCAS) component, subject to a minimum funding amount authorized by § 1000.328. Based on the amount of funding appropriated annually for the IHBG program, HUD calculates the annual grant for each tribe

and conveys this information to Indian tribes. HUD's current regulations at § 1000.330 describe the sources of data HUD will use to determine the Need component variables. The regulations state that the data shall be "data available that is collected in a uniform manner that can be confirmed and verified for all AIAN [American Indian Alaska Native] households and persons living in an identified area. Initially, the data used are U.S. Decennial Census data."

The most recent Decennial Census in 2000, for the first time, allowed respondents to claim that they are "American Indian Alaska Native (AIAN) in combination with other racial groups" (multi-race), or to report their race as "AIAN only" (single race). The current regulation does not specify the use of single race or multi-race data. Accordingly, HUD exercised the discretion provided by the regulation to determine that the 2000 Census categories of "AIAN alone" and "AIAN in combination with other racial groups" represented the best available data to accomplish the statutory purposes of the IHBG program. HUD concluded that it is the most inclusive definition of AIAN persons and ensures that no such persons are excluded. Accordingly, in Fiscal Years (FY) 2004 and 2005, HUD issued its IHBG funding by using multi-race census data for making funding allocations.

For FY2006, Congress directed the Department to calculate funding allocations under the need component of the IHBG formula using multi-race and single race Census data, and to award each tribe the higher of the two calculations. Title III of the FY2006 Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act provided that, "notwithstanding the Native American Housing Assistance and Self-Determination Act of 1996, to determine the amount of the allocation under title I of such Act for each Indian tribe, the Secretary shall apply the formula under section 302 of such Act with the need component based on single-race Census data and with the need component based on multi-race Census data, and the amount of the allocation for each Indian tribe shall be the greater of the two resulting allocation amounts:".

The IHBG Formula Negotiated Rulemaking Committee (Committee) discussed the use of multi-race data during its 2003-2005 negotiations. HUD established the Committee, consisting of tribal and HUD representatives, to negotiate and develop proposed regulatory changes to the IHBG

allocation formula regulations. The Committee was unable to reach consensus on changes to current regulatory language at § 1000.330 regarding the use of census data. The proposed rule negotiated by the Committee was published on February 25, 2005 (70 FR 9489), and is currently in the process of being made final. Additional information regarding the Committee's discussion on the use of multi-race census data can be found in the preamble of the proposed rule (*see* 70 FR 9496).

II. This Notice

Consistent with the language of Senate Report 109–109, this notice invites public comment on HUD's use of multi-race data in the computation of the IHBG program allocation formula. Specifically, HUD invites public comments on the feasibility of using either single race or multi-race data to determine funding for the Need component of the IHBG formula. As noted above, the regulations at 1000.330 do not address the use of multi-race or

single race census data. Accordingly, at this time, HUD is not proposing a regulatory change. Following HUD's review and consideration of the comments received on this notice, HUD may proceed with rulemaking as necessary.

Dated: December 1, 2006.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

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