



441 G St. N.W.
Washington, DC 20548

March 10, 2015

The Honorable Blaine Luetkemeyer
Chairman
Subcommittee on Housing and Insurance
Committee on Financial Services
House of Representatives

Data Use and Regulatory Status of the Indian Housing Block Grant Program

Dear Mr. Chairman:

American Indian and Alaska Native populations (Native Americans) primarily receive federal assistance for low-income housing through the Indian Housing Block Grant (IHBG) program. IHBG is administered by the Department of Housing and Urban Development (HUD) and was established by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).¹ Under NAHASDA, IHBG allocates funds to tribes using a formula, which includes a component that assesses a tribe's need for affordable housing activities (need component). To make funding allocations to tribal entities, the IHBG program has largely relied on the 2000 U.S. decennial census data, which included information on population counts, housing, and income characteristics for Native Americans. Recent changes in how census data are collected and whether the decennial census still serves as the best source of data have been discussed during recent negotiated rulemaking meetings—a collaborative process used by HUD staff and tribal representatives to develop regulations for the IHBG program.

In 2010, we reported that NAHASDA's first appropriation for the IHBG program in fiscal year 1998 was \$592 million.² In 2014, we reported that average annual funding for the program was approximately \$667 million between 1998 and 2013.³ The Consolidated and Further Continuing Appropriations Act of 2015 has appropriated \$650 million for the IHBG program.

You asked us to look at the data used for the allocation of funds for HUD's IHBG program. This report presents descriptive information addressing (1) factors that may affect the allocation of IHBG funds, (2) data used in the need component of the IHBG funding formula, and (3) activities of negotiated rulemaking associated with data used to allocate IHBG funds.

To conduct our work, we

- reviewed NAHASDA and relevant program regulations and guidance;

¹Pub. L. No. 104-330, 110 Stat. 4016 (1996) (codified, as amended, at 25 U.S.C. § 4101 et seq.).

²GAO, *Native American Housing: Tribes Generally View Block Grant Program as Effective, but Tracking of Infrastructure Plans and Investments Needs Improvements*, [GAO-10-326](#) (Washington, D.C.: Feb. 25, 2010).

³GAO, *Native American Housing: Additional Actions Needed to Better Support Tribal Efforts*, [GAO-14-255](#) (Washington, D.C.: Mar. 27, 2014).

- reviewed prior GAO reports, and other relevant studies from the Congressional Research Service (CRS) and the Census Bureau pertaining to the IHBG program and the American Indian and Alaska Native populations;⁴
- reviewed documentation from negotiated rulemaking sessions to identify actions taken or decisions made relevant to the need component of the IHBG formula; and
- interviewed staff at HUD, the Census Bureau, and the Bureau of Indian Affairs.

We conducted our work from October 2014 to March 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Summary

IHBG program allocations are based on a funding formula that accounts for, among other things, housing stock (the costs of operating and modernizing HUD-funded housing units developed prior to the enactment of NAHASDA) and population counts and characteristics. Currently, HUD uses the 2000 decennial census and service population estimates (based on birth and death rate data) from the Indian Health Service to inform the population count and housing characteristics used in the funding formula. In the event that a tribe believes that the 2000 decennial census does not accurately reflect the tribe's population, the tribe may challenge the census data and submit its own documentation, which must meet certain regulatory requirements. HUD officials told us that since 2004, HUD has received a total of 45 challenges to the 2000 decennial census, 15 of which have been successful and may have resulted in changes to the allocation. In June 2014, a negotiated rulemaking committee composed of tribal representatives and HUD officials established a study group to identify and evaluate alternative data sources that could replace the 2000 decennial census data. The study group intends to issue a final report containing a recommendation for a data source or sources to be used in the IHBG funding formula. The study group expects to submit this report to the negotiated rulemaking committee for consideration in July 2015. If the committee approves the study group's recommendation, it will submit the proposal to the Secretary of HUD for approval. According to HUD, if the Secretary approves the recommendation, it would then undergo a notice and comment period in the *Federal Register* before becoming a final rule.

Background

Prior to NAHASDA, Native Americans received assistance for affordable housing under various programs aimed at providing housing assistance to low-income families. When NAHASDA was enacted in 1996, it incorporated the major programs that served Native Americans into a single block grant program (the IHBG program). The IHBG program is a formula grant program that provides funding for affordable housing activities to eligible Native American tribes or tribally designated housing entities (TDHE). A TDHE acts on behalf of one or more tribes authorizing or establishing the housing entity. Under NAHASDA, the amount of funding is based on an allocation formula that has two components: (1) the costs of operating and modernizing pre-

⁴GAO-10-326 and GAO-14-255. CRS, *The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA): Background and Funding*, R43307 (Nov. 12, 2013). Census, *2010 Census Update Enumerate Operations Assessment* (Washington D.C.: Sept. 17, 2012).

NAHASDA, HUD-funded housing units, referred to as Formula Current Assisted Stock, and (2) the need for providing affordable housing (need component). In creating NAHASDA, Congress recognized Native Americans' right to self-determination and self-governance through, among other things, (1) negotiated rulemaking, (2) direct funding (to their tribes or designated entities), and (3) authority to determine the details of their housing programs. Negotiated rulemaking is the process through which HUD officials and tribal representatives come together to develop regulations, including those related to the IHBG program.⁵

Federally recognized Native American tribes or their TDHEs and a limited number of state-recognized tribes are eligible for NAHASDA programs. Families that are eligible for NAHASDA-funded assistance are low-income families—defined as Indian families whose income does not exceed 80 percent of the area median income—residing on a reservation or in an Indian area. Under specific circumstances, non-low-income Indian families and non-Indian families residing on a reservation or in an Indian area are also eligible to receive housing assistance.

NAHASDA provides a high-level overview of the factors to be used to determine the need component of the IHBG Formula.⁶ These factors include the following:

- the extent of poverty and economic distress and the number of Indian families within the Indian areas of the tribe, and
- other objectively measurable conditions specified by the Secretary of HUD and Native American tribes.

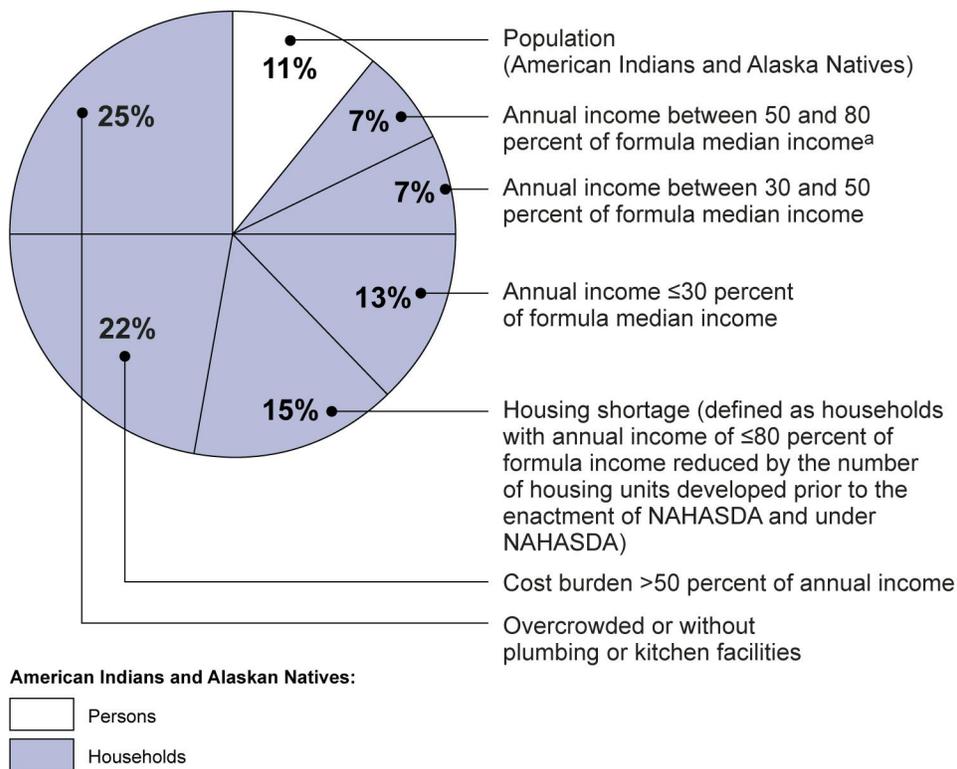
The law does not specify the data to be used or how these factors are to be measured. Regulation for the IHBG program, established by negotiated rulemaking with tribes, defines more specifically how need is to be calculated, including the use of seven criteria composed of household factors (such as total household income) and the population count of Native Americans to be used in the need component of the allocation formula, as shown in figure 1.⁷

⁵24 C.F.R. § 1000.9; Pub. L. No. 104-330, § 106(b) (codified, as amended, at 25 U.S.C. § 4116(b)).

⁶Pub. L. No. 104-330, § 302 (codified, as amended, at 25 U.S.C. § 4152).

⁷24 C.F.R. § 1000.324. The 2000 decennial census provided respondents the option to choose one or more race categories. Since 2005, Congress has required in the annual appropriation for the IHBG program that HUD compute the need component of the formula based on single-race census data (those who only identify as Native American) as well as based on multirace census data (those who identify as Native American and another race), and allocate for each Indian tribe the greater of the two resulting amounts.

Figure 1: Weighted Share of Need Factors in the Indian Housing Block Grant Formula



Source: Graphic presentation of 24 C.F.R., § 1000.324. | GAO-15-353R

^aFormula median income is computed based on areas outside metropolitan areas. It is the higher of the median income of the county in which the area is located or the median income of the entire nonmetropolitan area of the State. See 24 C.F.R. § 1000.302 Def. of *Formula Median Income*.

Factors That May Affect the Allocation of IHBG Funds

A number of factors may affect the allocation of IHBG funds to tribes, including factors related to geography and population, statutory minimums, and a tribe's ability to opt out of receiving funding. Specific geographic areas, known as formula areas, are defined by regulation. Within a formula area, the populations of all Native Americans are estimated using 2000 decennial census data whether or not they are members of the tribe assigned to that formula area or of another tribe. HUD officials explained that population density is not a factor in the formula. However, officials told us that generally the more American Indians and Alaska Natives living in an area, the higher the share of funding potentially available to a tribe. An official also noted that a tribe could lose funding even if the American Indian and Alaska Native population in that area grew, such as when the share of low-income households for that area declined. In cases where the data indicate that the population for a Native American tribe within its formula area is greater than its tribal enrollment (a tribes' record of membership), the regulations state that the tribe's population data used in the IHBG formula will not be allowed to exceed twice a tribe's enrolled population, unless the tribe can show that it is providing assistance to substantially more nonmember Native Americans who are members of other federally recognized tribes.⁸ HUD officials told us that this population cap provision in the regulation is intended to prevent a tribe within a formula area in a densely populated metropolitan area from getting an artificially large allocation.

⁸24 C.F.R. § 1000.302, Def. of *Formula Area*, para. (5).

The negotiated rulemaking committee originally established a provision for minimum IHBG funding of \$50,000 for the need portion of the grant for each eligible tribe for the first time a tribe was awarded funding and then the minimum was reduced to \$25,000 for each subsequent year. The annual grant minimum was later revised through negotiated rulemaking to reflect a percentage of the IHBG annual appropriation beginning in fiscal year 2008.⁹ According to a HUD data report on the IHBG allocations for fiscal year 2014, this percentage resulted in a minimum allocation of \$50,321 during fiscal year 2014. HUD also identified in this data report that the largest allocation in fiscal year 2014 was \$83.4 million. In addition, a “hold harmless” provision in NAHASDA requires that a tribe receive at least the grant amount equal to the funding it received in fiscal year 1996, and other tribes’ grants are then adjusted to keep within the available appropriation.¹⁰

HUD officials told us that all federally recognized tribes and five state-recognized tribes are eligible to receive IHBG program funds, but some tribes have provided written notice to HUD to opt out of receiving funding through the IHBG program. To receive a grant distribution, eligible tribes must submit an Indian Housing Plan (IHP) that identifies their affordable housing needs and describes the housing activities they plan to pursue to address those needs. However, HUD officials explained that another way that a tribe may opt out of not receiving funding is by not submitting an IHP, although money was allocated to that tribe. HUD officials told us that this has resulted in unclaimed funds in an amount ranging from \$3 million to \$5 million annually. These funds are carried over and added to the overall pool of funds for the following year. To more effectively use carryover funds in a given year, in 2014, the negotiated rulemaking committee approved a proposed amendment to the regulations that would allow HUD to use available carryover funds (up to \$3 million, if available) to support tribes that received less than 0.011547 percent of a given year’s appropriation. According to HUD officials, this proposed regulation would both increase the minimum grant percentage as well as the number of tribes eligible to receive that minimum, provided there was carryover funding. This proposal is to be included in the draft proposed rule that the negotiated rulemaking committee expects to finalize in fall 2015 and subsequently present to the Secretary of HUD for approval.

Data Used in the Need Component of the IHBG Program Formula

IHBG regulation states, “The sources of data for the need variables [factors] shall be data available that is collected in a uniform manner that can be confirmed and verified for all American Indian and Alaska Native households and persons living in an identified area.”¹¹ HUD officials told us that after extensive discussions weighing several options during the 1997 through 1998 negotiated rulemaking committee meetings, the committee decided to use the U.S. decennial census data—a mandated count every 10 years of every resident in the United States. The rulemaking committee determined that the census data were (1) fair and equitable to all tribes, (2) objectively measurable and defensible, and (3) available and consistent for all tribes.

Currently, HUD is using data from the 2000 decennial census to populate the variables in the IHBG formula. HUD officials explained that the 2000 decennial census was composed of two

⁹24 C.F.R. § 1000.328(a). To be eligible for the minimum allocation, a tribe must have received less than \$200,000 under the Formula Current Assisted Stock component of the IHBG formula for the fiscal year and certify in its Indian Housing Plan the presence of any households at or below 80 percent of median income.

¹⁰25 U.S.C. 4152(d)(1)(A) implemented by 24 C.F.R. § 1000.340(b).

¹¹24 C.F.R. §1000.330 (a).

distinct decennial products. For the population count, HUD uses a survey that the Census Bureau refers to as the “short form” that is sent to all households. For income and housing characteristics, HUD uses a survey that the Census Bureau referred to as the “long form” that was sent to a sample of households in the United States in 2000. The negotiated rulemaking committee decided during its 2003-2004 rulemaking sessions to update the 2000 decennial census data annually using Indian Health Service (IHS) Population Estimates, which are calculated based on birth and death vital records for Native Americans.¹² According to HUD officials, HUD calculates the percentage difference between the 2000 decennial census data and the IHS population estimate and applies that ratio to all factors in the formula as a method for updating them each year. Starting in 2005, the Census Bureau began to administer the American Community Survey (ACS) to replace the decennial census “long form” survey. Although the 2010 decennial census captured population data that could be used by HUD and ACS annually captures an estimate of data on income and housing characteristics, neither product has been approved for use through negotiated rulemaking and neither has been used by HUD for the IHBG calculation. Although census data were not created to collect the information needed in the IHBG formula, the Census Bureau and HUD officials told us that they work together. HUD officials told us that the Census Bureau provided special tabulations from the 2000 decennial census to HUD because the standard tabulations are not sufficient to administer the IHBG formula. For example, a HUD official explained that HUD needs the Census Bureau to tabulate survey responses for nonstandard geographies to create estimates for formula areas.

IHBG regulation allows a Native American tribe, the TDHE, or HUD to challenge data used in the IHBG formula if they believe the 2000 decennial census data do not accurately reflect the tribal population, income, or household factors.¹³ HUD has provided guidance to tribes for how to challenge decennial census data used in the need component of the IHBG formula. A tribe can challenge the population data used, one or more of the household factors used, or both. If a tribe chooses to issue a challenge, it must provide data collected in a manner acceptable to HUD. Some tribes hire contractors to conduct surveys to challenge the data, and HUD officials told us that they encourage tribal entities to seek this type of assistance. Potentially acceptable alternative sources of data include administrative records, such as tribal enrollment data, or surveys conducted by the tribe. If a survey method is chosen, the tribe must decide whether it will be conducted based on 100 percent enumeration or whether a sample is sufficient, but the sampling method must result in a high response rate—70 percent or more—to be accepted by HUD. HUD requires that the data submitted in the challenge meet the following basic rules:

- Data elements collected by a survey must be equivalent to those collected by the 2000 U.S. census long form.
- Method used must be unbiased, statistically valid, and acceptable to HUD.
- Method must use the same definitions for key concepts used by the Census Bureau.
- All surveys and data collected must be made available to HUD.

HUD officials told us that since 2004, 32 tribes have submitted 45 total challenges to HUD. This total number does not represent independent and unique challenges, as at least seven tribes submitted challenges for the same issue more than once. Repeat challenges may occur when a tribe does not submit all the necessary data within the required time frame and the submission is closed. According to HUD, of the 45 total challenges, 15 have been successful, and 28 have

¹²The final rule was issued April 2007. 72 Fed. Reg. 20018 (Apr. 20, 2007).

¹³24 C.F.R. §1000.336.

been unsuccessful. One challenge is still ongoing, and 1 was withdrawn. HUD officials told us that successful challenges may result in changes to a tribe's allocation. Based on our review of the information provided by HUD, the number of challenges in a given year has decreased over time. For example, there were 15 challenges in 2004 but 1 or 2 challenges per year from 2008 through 2014. A HUD official told us that the number of challenges may have peaked in 2004 as a result of replacing the 1990 decennial census data with the 2000 decennial census data.

According to HUD, HUD's primary reasons for denying challenges have included the following:

- Sample was nonrandom.
- No evidence was provided that the units were located within the tribe's formula area.
- Data source did not clearly document methodology used, sampling, and response rate.
- HUD was unable to verify that households were unduplicated in the survey.
- Response rate was low.

HUD officials told us that most tribes initially challenge all of the need factors but ultimately only challenge those factors that do not work in favor of the tribe. For example, a tribe may find that the overcrowding factor in its own survey is higher than that reported in the census but the income factors are lower. In this case, the tribe may withdraw its income factor challenge and retain the overcrowding factor challenge. HUD officials explained that when a tribe is successful in challenging the data, the new data stays in the formula and is updated by the IHS data in subsequent years but can be superseded by a new successful challenge.

HUD may also initiate a challenge to the data used in the IHBG formula. HUD may choose to initiate a challenge in the following types of circumstances:

- HUD has reason to believe that there are no longer any low-income Native American members living in a tribe's formula area.
- HUD wishes to review in more detail a previously approved census challenge.

Since 2004, HUD has challenged income-related need factors for specific tribes on eight occasions, which were based on site visits and correspondence with tribes. HUD officials explained that the income data they are using are from the 2000 decennial census, and they challenge a tribe's income data as they become aware of economic conditions changing in certain areas. In some cases, tribes have provided additional information as a result of these challenges and HUD has accepted their numbers. Some tribes did not respond to the challenge and HUD adjusted their allocations as needed.

Negotiated Rulemaking

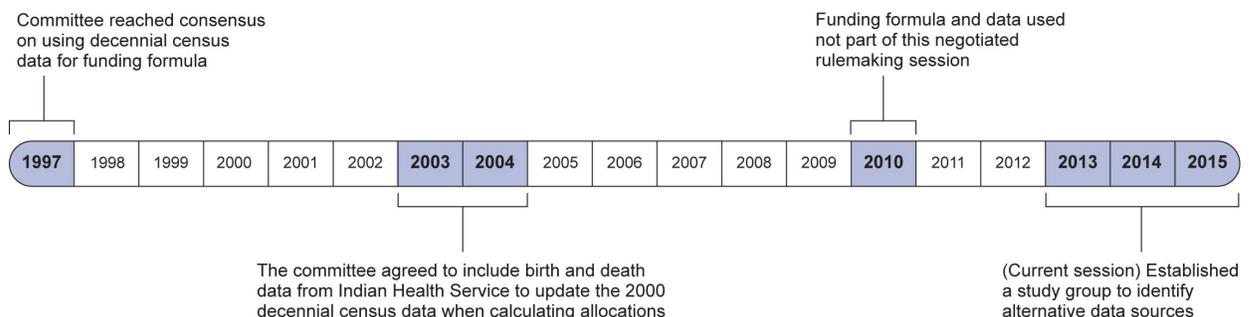
HUD officials and tribal representatives use negotiated rulemaking to collaboratively develop regulations, including those involving the IHBG formula.¹⁴ According to negotiated rulemaking agreed-upon protocols, the negotiated rulemaking committee must reach a unanimous consensus in order for any decision to be approved. Proposed regulatory changes where the committee has reached consensus are provided to the Secretary of HUD for approval. The Secretary of HUD has the authority to reject a proposed regulatory change but, according to HUD officials, has not used this authority to date.

In order to form the negotiated rulemaking committee, HUD solicits nominations through a published notice in the *Federal Register*. Individuals may nominate themselves or be nominated by someone. According to HUD officials, HUD evaluates all nominations and chooses members

¹⁴NAHASDA requires that HUD initiate a negotiated rulemaking within 90 days of a reauthorization of NAHASDA. 25 U.S.C. § 4116(b)(2)(C); 24 C.F.R. § 1000.9.

to ensure representation among the six regions (geographic areas) and from both small and large tribes. HUD publishes the proposed list in the *Federal Register*, considers comments, and then publishes the final membership for each negotiated rulemaking session. Individuals may serve as committee members more than once. Outside of the first negotiated rulemaking, which consisted of 48 members plus 10 federal members from HUD, the committees have consisted of about 24 tribal members plus 2 federal members, including the ongoing 2013-2015 negotiated rulemaking session. This is the fourth time the negotiated rulemaking committee has met. HUD officials told us that they generally select four tribal representatives from each of the six regions. HUD staff serve as the federal members on the full negotiated rulemaking committee and are voting members.¹⁵ When needed, additional HUD staff are called in to participate as expert advisors but are not voting members of the committee. The negotiated rulemaking committee co-chairs and a HUD official establish an agenda in advance of each meeting, which then must be unanimously approved by the full committee. HUD officials explained that generally they do reach consensus through compromise, but there have been a few instances when the committee could not reach consensus. For example, during the 2003-2004 negotiated rulemaking, the committee could not agree on including the use of alternative data sources (such as tribal census and tribal enrollment data) in the funding formula. The committee could not reach consensus because some members felt that opening the formula calculations to a variety of data sources, as opposed to a single source agreed upon by all tribes, would jeopardize the speed, accuracy, and fairness of the IHBG formula. See figure 2 for a timeline of major decisions of the negotiated rulemaking committee associated with the need component of the IHBG formula.

Figure 2: Major Decisions Associated with the Need Component of the Indian Housing Block Grant Funding Formula during Negotiated Rulemakings, 1997-2015



Source: GAO. | GAO-15-353R

The current negotiated rulemaking committee has a need workgroup that focuses on the need component of the funding formula. One goal of the need workgroup is to decide what data to use for the IHBG program funding formula, given that the 2000 decennial short form has been succeeded by the 2010 decennial census counts and that the 2000 decennial long form has been succeeded by the ACS. As a result, the need workgroup formed a study group in June

¹⁵The two HUD staff that serve on the negotiated rulemaking committee have historically been the Assistant Secretary for Public Housing and the Deputy Assistant Secretary for Native American Programs.

2014 to identify and evaluate alternative data sources that could replace the 2000 decennial census data.

The study group consists of seven members—one from each of the six regions and one federal member. Members may be, but are not required to be, part of the greater need workgroup. Technical representatives—such as representatives from data companies, attorneys, and HUD’s research staff—are allowed to provide support to tribal representatives. HUD officials told us that although consensus is the desired outcome for decisions made by the study group, a simple majority vote works when consensus cannot be reached. The study group has been tasked with identifying, characterizing, and evaluating potential alternative data sources, including ACS—and the option of individual tribes conducting their own counts. The study group plans to evaluate each data source nomination based on the following factors:

- Relevant—Does the source measure the extent of poverty and economic distress and the number of Indian families within the Indian areas of the tribe, as well as other objectively measurable conditions relevant to housing need as described in Section 302(b) 2-3 of NAHASDA?
- Current—Does the source reflect timely conditions to form the basis of yearly allocations?
- Accurate and precise—Does the source reflect conditions within a known and acceptable margin of error?
- Complete—Does the source include consistent information for all tribes/tribal areas?
- Available—Is the source available without substantial financial or other barriers to collection, access, and use?

Additionally, in order to assess these qualities, the data and data collection methodology need to be transparent. In addition to considering data sources, the study group also plans to identify additional revisions and modifications to existing data sources and data sets that would potentially address weaknesses in data sources and data sets, if any.

To date, the study group has created a framework for conducting the data source evaluation and developed evaluation criteria. In September 2014, HUD put in a request for information about alternative data sources in the *Federal Register* and received eight public comments at the end of October 2014:

- Four comments suggested using the ACS for the need factors but also suggested finding ways to enhance the data quality of ACS.
- Four comments suggested that a new, national survey be developed that targets Native American populations.
- Three comments suggested alternative data sources for the negotiated rulemaking committee to examine.¹⁶

The study group plans to issue a final report containing recommendations to the negotiated rulemaking committee in July 2015. According to HUD officials, the negotiated rulemaking committee expects to discuss the study group’s findings after the final report is issued. After August 2015, the negotiated rulemaking committee expects to present its recommendations to the Secretary of HUD. If the HUD Secretary approves the committee’s proposal, HUD officials plan to publish it as a proposed rule in the *Federal Register* for comment, followed by the publication of a final rule.

¹⁶Some comments included multiple suggestions.

Agency Comments

We provided a draft of this report to the Departments of HUD, Commerce, and the Interior for comment. The Departments of Commerce and the Interior did not provide any comments, and HUD provided technical comments, which we incorporated as appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretaries of HUD, Commerce, and the Interior. This report will be available on our website at <http://www.gao.gov>.

Should you or your staff have any questions concerning this report, please contact me at (202) 512-8678 or shearw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Andrew Pauline, Assistant Director; Rhonda Rose, Analyst-in-Charge; Rachel Batkins; Cindy Gilbert; John McGrail; Marc Molino; Jennifer Schwartz; and Carrie Watkins.

Sincerely yours,



William B. Shear
Director, Financial Markets and Community Investment

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