

and provide a timeline within which a determination will be made.

(b) If the waiver is granted, HUD shall notify the recipient of the waiver in writing and inform the recipient of any special condition or deadlines with which it must comply. Such waiver shall remain effective until revoked by the Secretary.

(c) If the waiver is denied, HUD shall notify the recipient of the denial and the reason for the denial in writing. If the request is denied, IHBG funds may not be spent on the housing units. If IHBG funds have been spent on the housing units prior to the denial, the recipient must reimburse the grant for all IHBG funds expended.

[77 FR 71527, Dec. 3, 2012]

Subpart D—Allocation Formula

§ 1000.301 What is the purpose of the IHBG formula?

The IHBG formula is used to allocate equitably and fairly funds made available through NAHASDA among eligible Indian tribes. A TDHE may be a recipient on behalf of an Indian tribe.

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

Allowable Expense Level (AEL) factor. In rental projects, AEL is the per-unit per-month dollar amount of expenses which was used to compute the amount of operating subsidy used prior to October 1, 1997 for the Low Rent units developed under the 1937 Act. The “AEL factor” is the relative difference between a local area AEL and the national weighted average for AEL.

Date of Full Availability (DOFA) means the last day of the month in which substantially all the units in a housing development are available for occupancy.

Fair Market Rent (FMR) factors are gross rent estimates; they include shelter rent plus the cost of all utilities, except telephones. HUD estimates FMRs on an annual basis for 354 metropolitan FMR areas and 2,355 non-metropolitan county FMR areas. The “FMR factor” is the relative difference between a local area FMR and the national weighted average for FMR.

Formula Annual Income. For purposes of the IHBG formula, annual income is

a household’s total income as currently defined by the U.S. Census Bureau.

Formula area. (1) Formula areas are:

(i) Reservations for federally recognized Indian tribes, as defined by the U.S. Census;

(ii) Trust lands;

(iii) Department of the Interior Near-Reservation Service Areas;

(iv) Former Indian Reservation Areas in Oklahoma Indian Areas, as defined by the U.S. Census as Oklahoma Tribal Statistical Areas (OTSAs);

(v) Congressionally Mandated Service Areas;

(vi) State Tribal Areas as defined by the U.S. Census as State Designated American Indian Statistical Areas (SDAISAs);

(vii) Tribal Designated Statistical Areas (TDSAs);

(viii) California Tribal Jurisdictional Areas established or reestablished by federal court judgment; and

(ix) Alaska formula areas described in paragraph (4) of this definition.

(2)(i) For a geographic area not identified in paragraph (1) of this definition, and for expansion or re-definition of a geographic area from the prior year, including those identified in paragraph (1) of this definition, the Indian tribe must submit, on a form agreed to by HUD, information about the geographic area it wishes to include in its Formula Area, including proof that the Indian tribe, 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 has attempted to establish such an MOA, and is providing substantial housing services and will continue to expend or obligate funds for substantial housing services, as reflected in its Indian Housing Plan and Annual Performance Report for this purpose.

(ii) Upon receiving 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 Indian tribes of the basis for its preliminary determination by certified mail and provide the Indian tribes with the opportunity to comment for a period of not less than 90 days. After consideration of the