August 20, 2003

Proposed Re-Write of Formula Area Definition

Redline draft highlighting proposed changes to the current regulatory text

<u>Section 1000.302 What are the definitions applicable to the IHBG formula</u>?

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<u>Formula area</u>. (1) Formula areas are ~~is the geographic area over which an Indian tribe could exercise court jurisdiction or is providing substantial housing services and, where applicable, the Indian tribe or TDHE has agreed to provide housing services pursuant to a Memorandum of Agreement with the governing entity or entities (including Indian tribes) of the area, including but not limited to~~:

(i) ~~A r~~Reservations for Federally recognized Tribes, as defined by the Census;

(ii) Trust lands;

~~(iii) Alaska Native Village Statistical Area;~~

~~(iv) Alaska Native Claims Settlement Act Corporation Service Area;~~

(~~v~~iii) Department of the Interior Near-Reservation Service Area;

(iv~~i~~) Former Indian Reservation Areas in Oklahoma Indian Areas, as defined by the Census as Oklahoma Tribal ~~Jurisdictional~~ Statistical Areas (OTSAs) [* not approved by the workgroup yet *];

(v~~ii~~) Congressionally Mandated Service Areas; ~~and~~

(vi~~ii~~) State ~~legislatively defined~~ Tribal Areas as defined by the Census as State ~~Tribal~~ Designated American Indian Statistical Areas (SDAISAs); ~~.~~

(vii) tribal Designated Statistical Areas (TDSAs); and

(viii) California Tribal Jurisdictional Areas established or reestablished by Federal court judgment.

(ix) For any tribe assigned a Formula Area geography in Fiscal Year 2003 not identified in paragraphs (1) and (2) of this definition, the Indian tribe shall continue to be assigned such Formula Area in subsequent Fiscal Years.

~~(2) For additional areas beyond those identified in the above list of eight, the Indian tribe must submit on the Formula Response Form the area that it wishes to include in its Formula Area and what previous and planned investment it has made in the area. HUD will review this submission and determine whether or not to include this area. HUD will make its judgment using as its guide whether this addition is fair and equitable for all Indian tribes in the formula.~~

(2)(i) For geographic area definitions not identified in paragraph (1) of this definition, and for expansion or re-definition of a geographic area from the prior year, the Indian tribe must submit on a form developed by HUD for this purpose, the geographic area it wishes to include in its Formula area, including proof that the Indian tribe:

(A) 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 have attempted to establish such an MOA; and

(B) Could exercise court jurisdiction; or

(C) Is planning to provide, or is providing, -substantial housing services and will continue to expend or obligate funds for substantial housing services as reflected in the form developed by HUD for this purpose.

~~(ii) HUD shall notify all tribes within the proposed Formula Area that are potentially affected by the request and give them the opportunity to submit information and comments that the tribes may deem relevant to the determination. HUD shall provide written notice of its basis for the determination and its effects on each tribe to all tribes/TDHES within the Formula Area~~

(ii) Upon receipt of 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 tribes of the basis for its preliminary determination by certified mail and provide the tribes with the opportunity to comment for a period of not less than 90 days. After consideration of the comments, HUD shall announce its final determination through *Federal Register* notice.

~~(3) Notwithstanding paragraphs (1) and (2) of this definition, all Alaska data on population and housing not on a reservation shall be credited as set forth in § 1000.327 to the Alaska Native Village, the regional Indian tribe, or to the regional corporation established pursuant to the Alaska Native Claims Settlement Act. For purposes of § 1000.327 and this definition:~~

(3) Notwithstanding paragraphs (1) and (2) of this definition, all Alaska data on population and housing not on a reservation shall be credited as set forth in § 1000.327 to the Alaska Native Village (ANV), the regional Indian tribe, or to the regional corporation established pursuant to the Alaska Native Claims Settlement Act. For purposes of § 1000.327 and this definition:

(i) The formula area of the ANV shall be the geographic area of the village or that area delineated by the Tribal Designated Statistical Area established for the ANV for purposes of the 1990 census or the Alaska Native Village Statistical Area (ANVSA) established for the ANV. To the extent the area encompassed by such designation may substantially exceed the actual geographic area of the village, such designation is subject to challenge pursuant to section 1000.336. If the ANVSA or the TDSA is determined pursuant to such challenge to substantially exceed the actual area of the village, then the geographic formula area of the ANV for purposes of § 1000.327 shall be such census designation as most closely approximates the actual geographic area of the village.

(ii) The geographic formula area of the regional corporation shall be the area established for the corporation by the Alaska Native Claims Settlement Act.

(iii) An ANV may seek to expand its Alaska formula area pursuant to the procedures set out in paragraph 2 of this section. Formula area added in this way shall be treated as overlapping pursuant to section 1000.326 except that the ANV shall be credited with population and needs data only for its own tribal members resident within the new or added area. All other housing and population data for the area shall remain with the tribe or tribes previously credited with such data.

~~(i) The geographic area of the Alaska Native Village is delineated by its associated Alaska Native Village Statistical Area (ANVSA) or Tribal Designated Statistical Area (TDSA) to the extent the area encompassed by such statistical designation does not substantially exceed the township or townships in which the village is located for purposes of the Alaska Claims Settlement Act. If an ANVSA or the TDSA substantially exceeds the township or townships in which a village is located, then the geographic area of the village shall be such census designation as most closely approximates the township or townships in which the village is located.~~

~~(ii) The geographic area of the regional corporation shall be the area established for the corporation by the Alaska Native Claims Settlement Act.~~

(~~3~~4) In some cases the population data for an Indian tribe within its formula area is greater than its tribal enrollment. In general, for those cases

to maintain fairness for all Indian tribes, the population data will not be allowed to exceed twice an Indian tribe's enrolled population. However, an Indian tribe subject to this cap may receive an allocation based on more than twice its total enrollment if it can show that it is providing substantial~~ing~~ housing ~~assistance~~ services to substantially more non-member Indians and Alaska Natives who are members of another Federally recognized Indian tribe than it is to members.

(45) In cases where an Indian tribe is seeking to receive an allocation more than twice its total enrollment, the tribal enrollment multiplier will be determined by the total number of Indians and Alaska Natives the Indian tribe is providing substantial housing ~~assistance~~ services (on July 30 of the year before funding is sought) divided by the number of members the Indian tribe is providing housing assistance. For example, an Indian tribe which provides housing to 300 Indians and Alaska Natives, of which 100 are members, would then be able to receive an allocation for up to three times its tribal enrollment if the

Indian and Alaska Native population in the area is three or more times the tribal enrollment.

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